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WHEN: Tuesday, June 14, 2011
9 a.m.–12:30 p.m.

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Federal Register

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

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

2 CFR Part 782

22 CFR Part 210

RIN 0412–AA66

Implementation of OMB Guidance on Drug-Free Workplace Requirements

AGENCY: U.S. Agency for International Development.

ACTION: Final rule.

SUMMARY: The U.S. Agency for International Development (USAID) is removing its regulation implementing the Government-wide common rule on drug-free workplace requirements for financial assistance, currently located within Part 210 of Title 22 of the Code of Federal Regulations (CFR), and issuing a new regulation to adopt the Office of Management and Budget (OMB) guidance at 2 CFR part 182. This regulatory action implements the OMB's initiative to streamline and consolidate into one title of the CFR all federal regulations on drug-free workplace requirements for financial assistance. These changes constitute an administrative simplification that would make no substantive change in USAID policy or procedures for drug-free workplace.

DATES: This final rule is effective on August 15, 2011 without further action. Submit comments by July 14, 2011 on any unintended changes this action makes in USAID policies and procedures for drug-free workplace. All comments on unintended changes will be considered and, if warranted, USAID will revise the rule.

ADDRESSES: You may submit comments, identified by RIN 0412–AA66 in the subject line to Ms. M. E. Yearwood, USAID—M/OAA/P, SA–44, 867B, 1300 Pennsylvania Ave., NW., Washington, DC 20523, e-mail *myearwood@usaid.gov,* fax (202) 567–4695.

FOR FURTHER INFORMATION CONTACT: Melita E. Yearwood, Procurement Analyst, Office of Acquisition and Assistance, Policy Division at (202) 567–4672.

SUPPLEMENTARY INFORMATION:

Background

The Drug-Free Workplace Act of 1988 [Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701, *et seq.*] was enacted as a part of omnibus drug legislation on November 18, 1988. Federal agencies issued an interim final common rule to implement the act as it applied to grants [53 FR 4946, January 31, 1989]. The rule was a subpart of the Government-wide common rule on non-procurement suspension and debarment. The agencies issued a final common rule after consideration of public comments [55 FR 21681, May 25, 1990].

The agencies proposed an update to the drug-free workplace common rule in 2002 [67 FR 3266, January 23, 2002] and finalized it in 2003 [68 FR 66534, November 26, 2003]. The updated common rule was redrafted in plain language and adopted as a separate part, independent from the common rule on non-procurement suspension and debarment. Based on an amendment to the drug-free workplace requirements in 41 U.S.C. 702 [Pub. L. 105–85, div. A, title VIII, Sec. 809, Nov. 18, 1997, 111 Stat. 1838], the update also allowed multiple enforcement options from which agencies could select, rather than requiring use of a certification in all cases.

When it established Title 2 of the CFR as the new central location for OMB guidance and agency implementing regulations concerning grants and agreements [69 FR 26276, May 11, 2004], OMB announced its intention to replace common rules with OMB guidance that agencies could adopt in brief regulations. OMB began that process by proposing [70 FR 51863, August 31, 2005] and finalizing [71 FR 66431, November 15, 2006] Government-wide guidance on non-procurement suspension and debarment in 2 CFR part 180.

As the next step in that process, OMB proposed for comment [73 FR 55776, September 26, 2008] and finalized [74 FR 28149, June 15, 2009] Government-wide guidance with policies and procedures to implement drug-free workplace requirements for financial assistance. The guidance requires each agency to replace the common rule on drug-free workplace requirements that the agency previously issued in its own CFR title with a brief regulation in 2 CFR adopting the Government-wide policies and procedures. One advantage of this approach is that it reduces the total volume of drug-free workplace regulations. A second advantage is that it collocates OMB's guidance and all of the agencies' implementing regulations in 2 CFR.

The Current Regulatory Actions

As the OMB guidance requires, USAID is taking two regulatory actions. First, we are removing the drug-free workplace common rule from 22 CFR Part 210. Second, to replace the common rule, we are issuing a brief regulation in 2 CFR Part 182 to adopt the Government-wide policies and procedures in the OMB guidance.

Invitation to Comment

Taken together, these regulatory actions are solely an administrative simplification and are not intended to make any substantive change in policies or procedures. In soliciting comments on these actions, we therefore are not seeking to revisit substantive issues that were resolved during the development of the final common rule in 2003. We are inviting comments specifically on any unintended changes in substantive content that the new part in 2 CFR would make relative to the common rule at 22 CFR Part 210.

Administrative Procedure Act

Under the Administrative Procedure Act (5 U.S.C. 553), agencies generally propose a regulation and offer interested parties the opportunity to comment before it becomes effective. However, as described in the ''Background'' section of this preamble, the policies and procedures in this regulation have been proposed for comment two times—one time by federal agencies as a common rule in 2002 and a second time by OMB as guidance in 2008—and adopted each time after resolution of the comments received.

This direct final rule is solely an administrative simplification that would make no substantive change in USAID's policy or procedures for drug-free

workplace. We therefore believe that the rule is noncontroversial and do not expect to receive adverse comments, although we are inviting comments on any unintended substantive change this rule makes.

Accordingly, we find that the solicitation of public comments on this direct final rule is unnecessary and that ''good cause'' exists under 5 U.S.C. 553(b)(B) and 553(d) to make this rule effective on August 15, 2011 without further action, unless we receive adverse comment by July 14, 2011. If any comment on unintended changes is received, it will be considered and, if warranted, we will publish a timely revision of the rule.

Executive Order 12866

OMB has determined this rule to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This proposed regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This proposed regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This proposed regulatory action does not have Federalism implications, as set forth in Executive Order 13132. 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.

List of Subjects

2 CFR Part 782

Administrative practice and procedure, Drug abuse, Grant administration, Grant programs, Reporting and recordkeeping requirements, Government procurement.

22 CFR Part 210

Administrative practice and procedure, Drug abuse, Grant administration, Grant programs, Reporting and recordkeeping requirements, Government procurement.

Accordingly, for the reasons set forth in the preamble, and under the authority of 5 U.S.C. 301, the USAID amends the Code of Federal Regulations, Title 2, Subtitle B, chapter VII, Part 782, and Title 22, chapter II, as follows:

Title 2—Grants and Agreements

■ 1. Add part 782 in Subtitle B, Chapter VII, to read as follows:

PART 782—REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Sec.
782.10 What does this part do?
782.20 Does this part apply to me?
782.30 What policies and procedures must I follow?

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

782.225 Whom in USAID does a recipient other than an individual notify about a criminal drug conviction?

Subpart C—Requirements for Recipients Who Are Individuals

782.300 Whom in USAID does a recipient who is an individual notify about a criminal drug conviction?

Subpart D—Responsibilities of Agency Awarding Officials

782.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

Subpart E—Violations of This Part and Consequences

782.500 Who in USAID determines that a recipient other than an individual violated the requirements of this part?
782.505 Who in USAID determines that a recipient who is an individual violated the requirements of this part?

Subpart F—Definitions

782.605 Award (USAID Supplement to Government Wide Definition at 2 CFR 182.605).

Authority: 41 U.S.C. 701–707.

§ 782.10 What does this part do?

This part requires that the award and administration of USAID grants and cooperative agreements comply with Office of Management and Budget (OMB) guidance implementing the portion of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701–707, as amended, hereafter referred to as ''the Act'') that applies to grants. It thereby—

(a) Gives regulatory effect to the OMB guidance (Subparts A through F of 2 CFR Part 182) for USAID's grants and cooperative agreements; and

(b) Establishes USAID policies and procedures for compliance with the Act that are the same as those of other Federal agencies, in conformance with the requirement in 41 U.S.C. 705 for Government wide implementing regulations.

§ 782.20 Does this part apply to me?

This part and, through this part, pertinent portions of the OMB guidance in Subparts A through F of 2 CFR part 182 (see table at 2 CFR 182.115(b)) apply to you if you are a—

(a) Recipient of a USAID grant or cooperative agreement; or

(b) USAID awarding official.

§ 782.30 What policies and procedures must I follow?

(a) *General.* You must follow the policies and procedures specified in applicable sections of the OMB guidance in Subparts A through F of 2 CFR part 182, as implemented by this part.

(b) *Specific sections of OMB guidance that this part supplements.* In implementing the OMB guidance in 2 CFR part 182, this part supplements four sections of the guidance, as shown in the following table. For each of those sections, you must follow the policies and procedures in the OMB guidance, as supplemented by this part.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(1) 2 CFR 182.225(a)	§ 782.225	Whom in USAID a recipient other than an individual must notify if an employee is convicted for a violation of a criminal drug statute in the workplace.

Section of OMB guidance	Section in this part where supplemented	What the supplementation clarifies
(2) 2 CFR 182.300(b)	§ 782.300	Whom in USAID a recipient who is an individual must notify if he or she is convicted of a criminal drug offense resulting from a violation occurring during the conduct of any award activity.
(3) 2 CFR 182.500	§ 782.500	Who in USAID is authorized to determine that a recipient other than an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.
(4) 2 CFR 182.505	§ 782.505	Who in USAID is authorized to determine that a recipient who is an individual is in violation of the requirements of 2 CFR part 182, as implemented by this part.

(c) *Sections of the OMB guidance that this part does not supplement.* For any section of OMB guidance in Subparts A through F of 2 CFR part 182 that is not listed in paragraph (b) of this section, USAID policies and procedures are the same as those in the OMB guidance.

Subpart A—Purpose and Coverage [Reserved]

Subpart B—Requirements for Recipients Other Than Individuals

§ 782.225 Whom in USAID does a recipient other than an individual notify about a criminal drug conviction?

A recipient other than an individual that is required under 2 CFR 182.225(a) to notify Federal agencies about an employee's conviction for a criminal drug offense must notify—

(a) Federal agencies if an employee who is engaged in the performance of an award informs you about a conviction, or you otherwise learn of the conviction. Your notification to the Federal agencies must—

(1) Be in writing;

(2) Include the employee's position title;

(3) Include the identification number(s) of each affected award;

(4) Be sent within ten calendar days after you learn of the conviction; and

(5) Be sent to every Federal agency on whose award the convicted employee was working. It must be sent to every awarding official or his or her official designee, unless the Federal agency has specified a central point for the receipt of the notices.

(b) Within 30 calendar days of learning about an employee's conviction, you must either—

(1) Take appropriate personnel action against the employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended; or

(2) Require the employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for these purposes by a Federal, State or local health, law enforcement, or other appropriate agency.

Subpart C—Requirements for Recipients Who Are Individuals

§ 782.300 Whom in USAID does a recipient who is an individual notify about a criminal drug conviction?

A recipient who is an individual and is required under 2 CFR 182.300(b) to notify Federal agencies about a conviction for a criminal drug offense must notify each USAID office from which it currently has an award.

Subpart D—Responsibilities of Agency Awarding Officials

§ 782.400 What method do I use as an agency awarding official to obtain a recipient's agreement to comply with the OMB guidance?

To obtain a recipient's agreement to comply with applicable requirements in the OMB guidance at 2 CFR part 182, you must include the following term or condition in the award:

Drug-free workplace. You as the recipient must comply with drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 782, which adopts the Government-wide implementation (2 CFR part 182) of sec. 5152–5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100–690, Title V, Subtitle D; 41 U.S.C. 701–707).

Subpart E—Violations of This Part and Consequences

§ 782.500 Who in USAID determines that a recipient other than an individual violated the requirements of this part?

The Director of the Office of Acquisition and Assistance is the official authorized to make the determination under 2 CFR 182.500.

§ 782.505 Who in USAID determines that a recipient who is an individual violated the requirements of this part?

The Director of the Office of Acquisition and Assistance is the official authorized to make the determination under 2 CFR 182.505.

Subpart F—Definitions

§ 782.605 Award USAID supplement to Government-wide definition at 2 CFR 182.605

Award means an award of financial assistance by the U.S. Agency for International Development or other Federal agency directly to a recipient.

(a) The term award includes:

(1) A Federal grant or cooperative agreement, in the form of money or property in lieu of money.

(2) A block grant or a grant in an entitlement program, whether or not the grant is exempted from coverage under the Government-wide rule that implements OMB Circular A–102 (for availability, see 5 CFR 1310.3) and specifies uniform administrative requirements.

(b) The term award does not include:

(1) Technical assistance that provides services instead of money.

(2) Loans.

(3) Loan guarantees.

(4) Interest subsidies.

(5) Insurance.

(6) Direct appropriations.

(7) Veterans' benefits to individuals (i.e., any benefit to veterans, their families, or survivors by virtue of the service of a veteran in the Armed Forces of the United States).

(c) Notwithstanding paragraph (a)(2) of this section, this paragraph is not applicable to AID.

■ 2. In title 22, chapter II, remove Part 210

Dated: March 24, 2011.

M.E. Yearwood,

Acquisitions and Assistance Policy Analyst, USAID.

[FR Doc. 2011–14243 Filed 6–13–11; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 93

[Docket No. FAA–2004–17005; Amdt. No. 1–63 and 93–90]

RIN 2120–AI17

Washington, DC Metropolitan Area Special Flight Rules Area; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Change of OMB approval number for information collection.

SUMMARY: This document notifies the public of a change in the Office of Management and Budget's approval control number for certain information collection. The rule titled ''Washington, DC Metropolitan Area Special Flight Rules Area'' was published on December 16, 2008. At that time, the final rule identified OMB Control Number 2120–0706 as the approval document for the flight plans and other information collected under that rule. That information collection, however, is accounted for under OMB Control Number 2120–0026.

DATES: The rule, including the information collection requirements in §§ 93.335, 93.339, 93.341, and 93.343, became effective on February 14, 2009. This document announces that the OMB approval for Domestic and International Flight Plans, #2120–0026, accounts for the paperwork burden in that rule.

CONTACT FOR FURTHER INFORMATION: For questions about this document, contact Ellen Crum, Airspace and Rules Group, Office of System Operations Airspace and AIM, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION: On December 16, 2008, the final rule ''Washington, DC Metropolitan Area Special Flights Rules Area'' was published in the **Federal Register** (75 FR 76195). In that rule, the FAA codified special flight rules and airspace and flight restrictions for certain aircraft operations in the Washington, DC Metropolitan Area.

In the Paperwork Reduction Act section of the final rule, the FAA noted that the flight plans and other information collection that the rule required had been approved by OMB. It said that ''OMB approved the collection of this information and assigned OMB Control Number 2120–0706.''

OMB information collection control #2120–0026 covers Domestic and International Flight Plans collection. Thus, the flight plans required for the Washington, DC Metropolitan Area Special Flight Rules Area are covered by information collection control #2120–0026. As a result, the FAA is withdrawing and discontinuing OMB control #2120–0706.

This document is being published to inform affected parties of this change.

Issued in Washington, DC, on June 7, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–14552 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1232; Airspace Docket No. 10–AEA–28]

Amendment of Class E Airspace; Waynesboro, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E Airspace at Waynesboro, VA, to accommodate the additional airspace need for the Standard Instrument Approach Procedures developed for Eagle's Nest Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. Also, the geographic coordinates for the airport will be corrected.

DATES: Effective 0901 UTC, August 25, 2011. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On March 18, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to amend Class E airspace at Eagle's Nest Airport, Waynesboro, VA (75 FR 14820) Docket No. FAA–2010–1232. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Subsequent to publication, the FAA found the geographic coordinates for the airport were not rounded down. This action will make that correction. Except for editorial changes, and the changes noted above, this rule is the same as published in the NPRM.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9U dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR Part 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 amends Class E5 airspace extending upward from 700 feet above the surface to accommodate new standard instrument approach procedures developed at Eagle's Nest Airport, Waynesboro, VA. This action is necessary for the safety and management of IFR operations at the airport. Additionally, the geographic coordinates for the airport will be rounded down to read ''(lat. 38°04′37″ N., long. 78°56′39″ W.)''

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section

40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Eagle's Nest Airport, Waynesboro, VA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, effective September 15, 2010, is amended as follows:

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA VA E5 Waynesboro, VA [Amended]

Eagle's Nest Airport, VA
(Lat. 38°04′37″ N., long. 78°56′39″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2 mile radius of Eagle's Nest Airport, and within 2 miles either side of the 052° bearing from the airport extending from the 6.2-mile radius to 15.1 miles northeast of the airport, and within 2 miles either side of the 232° bearing from the airport extending from the 6.2-mile radius to 15.1 miles southwest of the airport.

Issued in College Park, Georgia, on May 25, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–14590 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 740, 743, and 774

[Docket No. 110124056–1301–02]

RIN 0694–AF11

Wassenaar Arrangement 2010 Plenary Agreements Implementation: Commerce Control List, Definitions, Reports; Correction

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Correcting amendments.

SUMMARY: This document corrects errors in a final rule published by the Bureau of Industry and Security (BIS) in the **Federal Register** on Friday, May 20, 2011 that revised the Export Administration Regulations (EAR) by amending entries for certain items that are controlled for national security reasons in Categories 1, 2, 3, 4, 5 Parts I & II, 6, 7, 8, and 9; adding and amending definitions to the EAR; and revising reporting requirements. That final rule contained errors concerning radial ball bearings, as well as editorial mistakes.

DATES: *Effective Date:* This rule is effective: June 14, 2011.

FOR FURTHER INFORMATION CONTACT: For general questions contact Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, U.S. Department of Commerce at (202) 482–2440 or by *e-mail: sharron.cook@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 20, 2011, the final rule, ''Wassenaar Arrangement 2010 Plenary Agreements Implementation: Commerce Control List, Definitions, Reports'' was published in the **Federal Register** (76 FR 29610). The May 20th rule removed paragraph 2A001.b, ''Other ball bearings and solid roller bearings, having all tolerances specified by the manufacturer in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or RBEC–9, or other national equivalents), or better.'' However, there is a subset of these ball bearings that are listed on the Missile Technology Control Regime Annex under 3.A.7, which provides: ''Radial ball bearings having all tolerances specified in accordance with ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC–9 or other national equivalents), or better and having all the following characteristics: a. An inner ring bore diameter between 12 and 50 mm; b. An outer ring outside diameter between 25 and 100 mm; *and* c. A width between 10 and 20 mm.'' Therefore, BIS is adding a new Export Control Classification Number (ECCN) 2A101 to the Commerce Control List (CCL) (Supplement No. 1 to part 774) to control the export and reexport of these ball bearings. ECCN 2A101 is controlled for Missile Technology (MT) and Anti-terrorism (AT) reasons, more specifically MT column 1 and AT column 1. A license is required under MT Column 1 of the Commerce Country Chart (Supplement No. 1 to part 738) for export or reexport of ball bearings classified under ECCN 2A101 to all destinations, except Canada. License requirements and license review policy for MT controlled items are set forth in § 742.5 of the EAR. License requirements and license review policy for AT controlled items are set forth in §§ 742.8 Iran, 742.9 Syria, 742.10 Sudan, and 742.19 North Korea.

To harmonize with the addition of ECCN 2A101, this rule adds 2A101 to the list of ECCNs in § 740.2(a)(5)(ii) that are MT controlled, but may be exported or reexported under §§ 740.9(a)(2)(ii) (License Exception TMP) or 740.10 (License Exception RPL) as one-for-one replacements for equipment previously legally exported or reexported.

To harmonize with the text of the WA list, this rule removes the word ''the'' in the phrase ''For the 'multiple channel ADCs' '' that appears in Technical Note 4 following paragraph 3A001.a.5.a.5.

To harmonize with the text of the WA list, this rule removes the word ''converter'' from the phrase ''ADC converter units'' in Technical Note 9 following paragraph 3A001.a.5.a.5.

To harmonize with the text of the WA list, this rule removes the Technical Note in the Items paragraph of ECCN 3E001.

This rule removes the Notes to paragraph (c)(1)(vi) in Section 743.1, because these notes relate to paragraphs 6A002.a.3 and 6A006.d, which were removed from Wassenaar reporting requirements in the May 20th rule.

This rule also removes paragraphs 6A005.a.1 and 6A006.g and .h from the limited restrictions under the TSR paragraph of the License Exception section of ECCNs 6E001 and 6E002. Paragraph 6A005.a.1 is removed because it is not listed on the Wassenaar Arrangement Sensitive or Very Sensitive Lists. Paragraph 6A006.g and .h are no longer in existence, as these paragraphs were removed from the CCL on July 15, 2005 (70 FR 41094, 41099).

This rule also removes paragraph 6A008.l.3 from Supplement No. 1 to part 740.11 ''Additional Restrictions on Use of License Exception GOV.'' The

May 20th rule removed and reserved paragraph 6A008.l.3. The Wassenaar Arrangement (WA) inadvertently left this paragraph on the Sensitive and Very Sensitive Lists, but in the Spring of 2011 the WA agreed to correct this error. In addition, this rule removes 6A008.l.3 from the limited restrictions under the TSR paragraph of the License Exception section of ECCNs 6D001, 6E001 and 6E002.

This rule also replaces the double quotes with single quotes around the term ''Active noise reduction or cancellation systems'' in paragraph 8A002.o.3.b and the Technical Note of that paragraph. Single quotes are used to indicate the term is defined in the ECCN entry and double quotes are used when the term is defined in Section 772.1.

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) through Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 12, 2010, 75 FR 50681 (August 16, 2010).

Saving Clause

Shipments of items removed from license exception eligibility or eligibility for export without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard an exporting carrier, or en route aboard a carrier to a port of export, on June 14, 2011, pursuant to actual orders for export to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported from the United States before August 15, 2011. Any such items not actually exported before midnight, on August 15, 2011, require a license in accordance with this regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule involves two collections of information subject to the PRA. One collection has been approved by OMB under control number 0694–0088, ''Multi Purpose Application,'' and carries a burden hour estimate of 58 minutes for a manual or electronic submission. The other collection has been approved by OMB under control number 0694–0106, ''Reporting and Recordkeeping Requirements under the Wassenaar Arrangement,'' and carries a burden hour estimate of 21 minutes for a manual or electronic submission. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to Jasmeet Seehra, OMB Desk Officer, by e-mail at *Jasmeet_K._Seehra@omb.eop.gov* or by fax to (202) 395–7285; and to the Office of Administration, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Avenue, NW., Room 6622, Washington, DC 20230.

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

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Immediate implementation of these amendments fulfills the United States' international obligation to the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The Wassenaar Arrangement (WA) contributes to international security and regional stability by promoting greater responsibility in transfers of conventional arms and dual use goods and technologies, thus preventing destabilizing accumulations of such items. The Wassenaar Arrangement consists of 40 member countries that act on a consensus basis, and the changes set forth in this rule implement agreements reached at the December 2010 plenary session of the WA. Since the United States is a significant exporter of the items in this rule, implementation of this provision is necessary for the WA to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by WA members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely manner. If this rulemaking was delayed to allow for notice and comment, it would prevent the United States from fulfilling its commitment to the WA in a timely manner and would injure the credibility of the United States in this and other multilateral regimes.

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Office of Exporter Services, Bureau of Industry and Security, Department of Commerce, 14th and Pennsylvania Ave., NW., Room 2099, Washington, DC 20230.

List of Subjects

15 CFR Part 740

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

15 CFR Part 743

Administrative practice and procedure, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 740, 743 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 740—[AMENDED]

■ 1. The authority citation for Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

§ 740.2 [Amended]

■ 2. Section 740.2 is amended by removing the phrase ''ECCN 2A001'' and adding in its place ''ECCNs 2A001 or 2A101'' in paragraph (a)(5)(ii).

§ 740.11 [Amended]

■ 3. In § 740.11, Supplement No. 1 to § 740.11 is amended by:

■ a. Removing ''6A008.l.3,'' from the following paragraphs:

1. (a)(1) introductory text;
2. (a)(1)(vii)(D) and (E);
3. (b)(1) introductory text; and
4. (b)(1)(vii)(D) and (E); and

■ b. Removing ''6A008.l.3 or'' from paragraphs (a)(1)(vi)(C) and (b)(1)(vi)(C).

PART 743—[AMENDED]

■ 4. The authority citation for Part 743 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

§ 743.1 [Amended]

■ 5. Section 743.1 is amended by removing the notes to paragraph (c)(1)(vi).

PART 774—[AMENDED]

■ 6. The authority citation for Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.,* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2010, 75 FR 50681 (August 16, 2010).

■ 7. Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing is amended by adding ECCN 2A101, to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

2A101 Radial Ball Bearings Having all Tolerances Specified in Accordance With ISO 492 Tolerance Class 2 (or ANSI/ABMA Std 20 Tolerance Class ABEC-9 or Other National Equivalents), or Better and Having all the Following Characteristics (see List of Items Controlled).

License Requirements

Reason for Control: MT, AT0

Control(s)	Country chart
MT applies to entire entry	MT Column 1.
AT applies to entire entry ..	AT Column 1.

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A
List of Items Controlled
Unit: $ value
Related Controls: See ECCN 2A001.
Related Definitions: N/A
Items:
a. An inner ring bore diameter between 12 and 50 mm;
b. An outer ring outside diameter between 25 and 100 mm; and
c. A width between 10 and 20 mm.

* * * * *

Supplement No. 1 to Part 774 [Amended]

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3 Electronics, ECCN 3A001, List of Items Controlled section the Items paragraph is amended by:

■ a. Removing the phrase ''For the 'multiple channel ADCs''' from paragraph 4 of the Technical Notes following paragraph a.5.a.5 and adding in its place ''For 'multiple channel ADCs' ''; and

■ b. Removing the phrase ''multiple ADC converter units'' from paragraph 9 of the Technical Notes following paragraph a.5.a.5 and adding in its place ''multiple ADC units''.

Supplement No. 1 to Part 774 [Amended]

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 3 Electronics, ECCN 3E001, List of Items Controlled section the Items paragraph is amended by removing the Technical Note.

Supplement No. 1 to Part 774 [Amended]

■ 10. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and ''Lasers'', ECCN 6D001 is amended by removing the phrase ''6A008.d, h, k, or 1.3, '' and adding in its place ''6A008.d, h, or k, '' in paragraph 3 of the TSR paragraph in the License Exceptions section.

Supplement No. 1 to Part 774 [Amended]

■ 11. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and ''Lasers'', ECCN 6E001 is amended by:

■ a. Removing 6A005.a.1, 6A006.g, 6A006.h, and 6A008.l.3 from paragraph (4)(a) of the TSR paragraph in the License Exceptions section; and

■ b. Removing the phrase ''6A008.l.3 or'' from paragraph (4)(c) of the TSR paragraph in the License Exceptions section.

Supplement No. 1 to Part 774 [Amended]

■ 12. Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and ''Lasers'', ECCN 6E002 is amended by removing 6A005.a.1, 6A006.g, 6A006.h, and 6A008.l.3 from paragraph (3)(a) of the TSR paragraph in the License Exceptions section.

Supplement No. 1 to Part 774 [Amended]

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 8—Marine, ECCN 8A002 is amended by removing the double quotes around the term ''Active noise reduction or cancellation systems'' in paragraph o.3.b and the Technical Note of that paragraph and adding in its place single quotes.

Dated: June 8, 2011.

Bernard Kritzer,

Director, Office of Exporter Services.

[FR Doc. 2011–14667 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–33–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64628; File No. S7–10–11]

RIN 3235–AK98

Beneficial Ownership Reporting Requirements and Security-Based Swaps

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; confirmation.

SUMMARY: We are readopting without change the relevant portions of Rules 13d–3 and 16a–1. Readoption of these provisions will preserve the application of our existing beneficial ownership rules to persons who purchase or sell security-based swaps after the effective

date of new Section 13(o) of the Securities Exchange Act of 1934. Section 13(o) provides that a person shall be deemed a beneficial owner of an equity security based on the purchase or sale of a security-based swap only to the extent we adopt rules after making certain determinations with respect to the purchase or sale of security-based swaps. After making the necessary determinations, we are readopting the relevant portions of Rules 13d–3 and 16a–1 to confirm that, following the July 16, 2011 statutory effective date of Section 13(o), persons who purchase or sell security-based swaps will remain within the scope of these rules to the same extent as they are now.

DATES: *Effective Date:* The effective date of this confirmation is July 16, 2011.

FOR FURTHER INFORMATION CONTACT: Nicholas Panos, Senior Special Counsel, at (202) 551–3440, or Anne Krauskopf, Senior Special Counsel, at (202) 551–3500, Division of Corporation Finance, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We are readopting without change portions of Rules 13d–3 [1] and 16a–1 [2] under the Securities Exchange Act of 1934 (''Exchange Act'').[3]

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I. Overview and Background

A. Overview

Section 766 of the Dodd-Frank Act amends the Exchange Act by adding Section 13(o), which provides that ''[f]or purposes of this section and section 16, a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap, only to the extent that the Commission, by rule, determines after consultation with the prudential regulators and the Secretary of the Treasury, that the purchase or sale of the security-based swap, or class of security-based swap, provides incidents of ownership comparable to direct ownership of the equity security, and that it is necessary to achieve the purposes of this section that the purchase or sale of the security-based swaps, or class of security-based swap, be deemed the acquisition of beneficial ownership of the equity security.'' Section 766 and Section 13(o) [4] become effective on July 16, 2011.[5]

The reason for this rulemaking, as discussed in more detail below, is to preserve the existing scope of our rules relating to beneficial ownership after Section 766 of the Dodd-Frank Act becomes effective. Absent rulemaking under Section 13(o), Section 766 may be interpreted to render the beneficial ownership determinations made under Rule 13d–3 inapplicable to a person who purchases or sells a security-based swap.[6] In that circumstance, it could become possible for an investor to use a security-based swap to accumulate an influential or control position in a public company without public disclosure. Similarly, a person who holds a security-based swap that confers beneficial ownership of the referenced equity securities under Section 13 and Rule 13d–3, or otherwise conveys such beneficial ownership through an understanding or relationship based upon the purchase or sale of the security-based swap, may no longer be considered a ten percent holder subject to Section 16 of the Exchange Act.[7] Further, an insider may no longer be subject to Section 16 reporting and short-swing profit recovery through transactions in security-based swaps that confer a right to receive either the underlying equity securities or cash. In addition, private parties may have difficulty making, or exercising private rights of action to seek to have made, determinations of beneficial ownership arising from the purchase or sale of a security-based swap.

On March 17, 2011, we proposed to readopt the portions of Rules 13d–3 and 16a–1(a) that relate to determinations of beneficial ownership as they pertain to persons who use security-based swaps.[8] To preserve the application of our beneficial ownership rules to persons who purchase or sell security-based swaps after the effective date of Section 13(o), we proposed to readopt without change the relevant portions of Rules 13d–3 and 16a–1. Readoption of the existing rules was proposed in order to ensure their continued application by the Commission on the same basis that they currently apply to persons who use security-based swaps.[9] While this

[1] 17 CFR 240.13d–3.

[2] 17 CFR 240.16a–1.

[3] 15 U.S.C. 78a *et seq.*

[4] Public Law 111–203, 124 Stat. 1797.

[5] *See* Section 774 of the Dodd-Frank Act, Public Law 111–203, 124 Stat 1376 (2010), which states that Section 766 becomes effective ''360 Days after the date of enactment.''

[6] A ''security-based swap'' is defined in Section 3(a)(68) [15 U.S.C. 78c(a)(68), added by Section 761(a) of the Dodd-Frank Act]. Section 712(d) of the Dodd-Frank Act provides that the Commission and the Commodity Futures Trading Commission (''CFTC''), in consultation with the Board of Governors of the Federal Reserve System (''Federal Reserve''), shall jointly further define, among others, the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement.'' These terms are defined in Sections 721 and 761 of the Dodd-Frank Act. The definitions of the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement,'' and regulations regarding mixed swaps also are expected to be the subject of a separate rulemaking by the Commission and the CFTC. In addition, Section 721(c) and 761(b) of the Dodd-Frank Act provide the CFTC and the Commission with the authority to define the terms ''swap'' and ''security-based swap,'' among other terms, to include transactions that have been structured to evade the requirements of subtitles A and B of Title VII, respectively, of the Dodd-Frank Act. To assist the Commission and the CFTC in further defining the terms specified above, the Commission and the CFTC have sought comment from interested parties. *See* Definitions Contained in Title VII of Dodd-Frank Wall Street Reform and Consumer Protection Act, Release No. 34–62717 (Aug. 13, 2010) [75 FR 51429] (advance joint notice of proposed rulemaking regarding definitions); *See also* Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, Release No. 34–64372 (Apr. 29, 2011) [76 FR 29818] (proposing product definitions for swaps).

[7] 15 U.S.C. 78p.

[8] See Release No. 34–64087 (March 17, 2011) [76 FR 15874] (the ''Proposing Release'').

[9] In addition, the readoption of the relevant portions of Rules 13d–3 and 16a–1(a) is neither

rulemaking is only intended to preserve the existing application of the beneficial ownership rules as they relate to security-based swaps, our staff is engaged in a separate project to develop proposals to modernize reporting under Exchange Act Sections 13(d)[10] and 13(g).[11]

We received five comment letters, all of which supported the proposal to readopt the relevant provisions of our rules. The commentators believed that the proposal, if adopted, would meet our objective of preserving the regulatory *status quo.*[12] Consistent with the proposal, we are readopting without change the relevant portions of Rules 13d–3 and 16a–1.

B. Sections 13(d) and 13(g) and Rule 13d–3

Sections 13(d) and 13(g) require a person who is the beneficial owner of more than five percent of certain equity securities[13] to disclose information relating to such beneficial ownership. While these statutory sections do not define the term ''beneficial owner,'' the Commission has adopted rules that determine the circumstances under which a person is or may be deemed to be a beneficial owner. In order to provide objective standards for determining when a person is or may be deemed to be a beneficial owner subject to Section 13(d), the Commission adopted Exchange Act Rule 13d–3.[14] Application of the standards within Rule 13d–3 allows for case-by-case determinations as to whether a person is or becomes a beneficial owner, including a person who uses a security-based swap.

If beneficial ownership, as determined in accordance with Rule 13d–3, exceeds the designated thresholds, beneficial owners are required to provide specified disclosures. The disclosures are intended to be required of persons who have the potential to influence or gain control of the issuer.[15] Specifically, Section 13(d) and the rules thereunder require that a person file with the Commission, within ten days after acquiring, directly or indirectly, beneficial ownership of more than five percent of a class of equity securities, a disclosure statement on Schedule 13D,[16] subject to certain exceptions.[17] Section 13(g) and the rules thereunder enable certain persons who are the beneficial owners of more than five percent of a class of certain equity securities to instead file a short form Schedule 13G,[18] assuming certain conditions have been met.[19] These statutory provisions and corresponding rules also impose obligations on beneficial owners to report changes in the information filed.

The beneficial ownership disclosure requirements of Schedules 13D and 13G were designed to provide disclosures to security holders regarding persons holding significant positions in public companies, such as the identity of the beneficial owners, the amount of beneficial ownership, the existence of a beneficial owner group, and in the case of persons who file a Schedule 13D, plans or proposals regarding the issuer. The disclosures made in Schedules 13D and 13G have been viewed as contributing to the information available to help investors make fully informed investment decisions with respect to their securities.[20] An additional regulatory objective served by these disclosures is to provide management of the issuer with information to ''appropriately protect the interests of its security holders.''[21] In enacting the original Section 13(d) legislation, Congress made clear that it intended to avoid ''tipping the balance of regulation either in favor of management or in favor of the person [potentially] making the takeover bid.''[22] In addition to providing information to issuers and security holders, Section 13(d) was adopted with a view toward alerting ''the marketplace to every large, rapid aggregation or accumulation of securities, regardless of technique employed, which might represent a potential shift in corporate control.''[23]

intended nor expected to change any existing administrative or judicial application or interpretation of the rules.

[10] 15 U.S.C. 78m(d).

[11] 15 U.S.C. 78m(g).

[12] The comment letters were submitted by the Business Law Section of the American Bar Association (Federal Regulation of Securities Committee), the American Business Conference, the Managed Funds Association, Chris Barnard, and the law firm of Wachtell, Lipton, Rosen & Katz, which described this action as ''both timely and necessary.'' The commentators also provided their views on possible future rulemaking to modernize reporting under Exchange Act Sections 13(d) and 13(g).

[13] Section 13(d)(1) applies to any equity security of a class that is registered pursuant to Section 12 of the Exchange Act, any equity security issued by a ''native corporation'' pursuant to Section 37(d)(6) of the Alaska Native Claims Settlement Act, and any equity security described in Exchange Act Rule 13d–1(i) [17 CFR 240.13d–1(i)]. Rule 13d–1(i) explains that for purposes of Regulation 13D–G, ''the term 'equity security' means any equity security of a class which is registered pursuant to section 12 of that Act, or any equity security of any insurance company which would have been required to be so registered except for the exemption contained in section 12(g)(2)(G) of the Act, or any equity security issued by a closed-end investment company registered under the Investment Company Act of 1940; *Provided,* Such term shall not include securities of a class of non-voting securities.''

[14] Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291 (Feb. 24, 1977) [42 FR 12342].

[15] S. Rep. No. 550, at 7 (1967); H.R. Rep. No. 1711, at 8 (1968); *Full Disclosure of Corporate Equity Ownership and in Corporate Takeover Bids, Hearings on S. 510 before the S. Banking and Currency Comm.,* 90th Cong. 16 (1967) (''The bill now before you has a much closer relationship to existing provisions of the Exchange Act regulating solicitation of proxies, since acquisitions of blocks of voting securities are typically alternatives to proxy solicitations, as methods of capturing or preserving control.''); *Takeover Bids, Hearings on H.R. 14475 and S. 510 before the Subcomm. on Commerce and Fin. of the H. Comm. on Interstate and Foreign Commerce,* 90th Cong. (1968).

[16] 17 CFR 240.13d–101.

[17] *See* Section 13(d)(6) and Rule 13d–1(b) and (d).

[18] 17 CFR 240.13d–102.

[19] *See* Amendments to Beneficial Ownership Reporting Requirements, Release No. 34–39538 (Jan. 12, 1998) [63 FR 2854] for a description of the types of persons eligible to file a Schedule 13G. The investors eligible to report beneficial ownership on Schedule 13G are commonly referred to as qualified institutional investors under Rule 13d–1(b), passive investors under Rule 13d–1(c), and exempt investors under Rule 13d–1(d). Unlike Section 13(d), Section 13(g) applies regardless of whether beneficial ownership has been ''acquir[ed]'' within the meaning of Section 13(d) or is viewed as not having been acquired for purposes of Section 13(d). For example, persons who obtain all their securities before the issuer registers the subject securities under the Exchange Act are not subject to Section 13(d) and persons who acquire not more than two percent of a class of subject securities within a 12-month period are exempt from Section 13(d) by Section 13(d)(6)(B), but in both cases are subject to Section 13(g).

[20] *See Computer Network Corp.* v. *Spohler* [1982 Transfer Binder] Fed Sec. L. Rep (CCH) ¶ 98,623 at 93,087 (D.D.C. March 23, 1982). *See also, San Francisco Real Estate Investors* v. *REIT of America,* [1982 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 98,874, at 94,557 (D. Mass. Nov. 19, 1982), *aff'd in part, rev'd in part* 701 F.2d 1000 (1st Cir. 1983). The Commission also has recognized that Section 13(d) was enacted primarily to provide ''adequate disclosure to stockholders in connection with any substantial acquisition of securities within a relatively short time.'' Adoption of Beneficial Ownership Disclosure Requirements, Release No. 34–13291, (Feb. 24, 1977) [42 FR 12342] *citing* S. Rep. No. 550, at 7 (1967).

[21] H.R. Rep. No. 1655, at 3 (1970); *see, e.g., Additional Consumer Protection in Corporate Takeovers and Increasing the Sec. Act Exemptions for Small Businessmen, Hearing Before the Sec. Subcomm. of the S. Banking and Currency Comm. on S. 336 and S. 343,* 91st Cong. (1970). *See also Bath Indus.* v. *Blot,* 427 F.2d 97, 113 (7th Cir. 1970). Disclosures made in compliance with Sections 13(d) and 13(g) also provide issuers that file registration statements, annual reports, proxy statements and other disclosure documents with the information they use to disclose all beneficial owners of more than five percent of certain classes of the issuer's equity securities as required by Item 403 of Regulation S–K. [17 CFR 229.403]. *See generally* H.R. Rep. No. 1655.

[22] H.R. Rep. No. 1711, at 4 (1968); S. Rep. No. 550, at 3 (1968). Both the House and Senate reports emphasized that Section 13(d) was enacted ''to require full and fair disclosure for the benefit of investors while at the same time providing the offeror and management equal opportunity to fairly present their case.''

[23] *GAF Corp.* v. *Milstein,* 453 F.2d 709, 717 (2d. Cir. 1971), *cert. denied,* 406 U.S. 910 (1972), cited by the Commission at note 16 in the following administrative proceeding: In the Matter of Harvey Katz, Release No. 34–20893 (April 25, 1984). A

Continued

On the basis of the information disclosed, the market would ''value the shares accordingly'' [24] due to the increased prospects for price discovery.[25]

C. Application of the Section 13 Beneficial Ownership Regulatory Provisions to Persons Who Purchase or Sell Security-Based Swaps

As noted above, the term ''security-based swap'' is defined in Section 3(a)(68) of the Exchange Act.[26] As explained in more detail below, in cases where a security-based swap confers voting and/or investment power (or a person otherwise acquires such power based on the purchase or sale of a security-based swap), grants a right to acquire an equity security, or is used with the purpose or effect of divesting or preventing the vesting of beneficial ownership as part of a plan or scheme to evade the reporting requirements, our existing regulatory regime may require the reporting of beneficial ownership.[27]

First, under Rule 13d–3(a), to the extent a security-based swap provides a person, directly or indirectly, with exclusive or shared voting and/or investment power over the equity security through a contractual term of the security-based swap or otherwise, the person becomes a beneficial owner of that equity security. Under Rule 13d–3(a), a person may become a beneficial owner even though the person has not acquired the equity security.[28]

Second, Rule 13d–3(b) generally provides that a person is deemed to be a beneficial owner if that person uses any contract, arrangement, or device as part of a plan or scheme to evade the beneficial ownership reporting requirements. To the extent a security-based swap is used with the purpose or effect of divesting a person of beneficial ownership or preventing the vesting of beneficial ownership as part of a plan or scheme to evade Sections 13(d) or 13(g), the security-based swap may be viewed as a contract, arrangement or device within the meaning of those terms as used in Rule 13d–3(b). A person using a security-based swap, therefore, may be deemed a beneficial owner under Rule 13d–3(b) in this context.

Finally, under Rule 13d–3(d)(1), a person is deemed a beneficial owner of an equity security if the person has a right to acquire the equity security within 60 days or holds the right with the purpose or effect of changing or influencing control of the issuer of the security for which the right is exercisable, regardless of whether the right to acquire originates in a security-based swap or an understanding in connection with a security-based swap. This type of right to acquire an equity security, if obtained through the purchase or sale of a security-based swap, is treated the same as any other right to acquire an equity security. Acquisition of such a right, regardless of its origin, results in a person being deemed a beneficial owner under Rule 13d–3(d)(1).

D. Section 16 and Rules 16a–1(a)(1) and 16a–1(a)(2)

Section 16 was designed both to provide the public with information about securities transactions and holdings of every person who is the beneficial owner of more than ten percent of a class of equity security registered under Exchange Act Section 12 [29] (''ten percent holder''), and each officer and director (collectively, ''insiders'') of the issuer of such a security, and to deter such insiders from profiting from short-term trading in issuer securities while in possession of material, non-public information. Upon becoming an insider, or upon Section 12 registration of the class of equity security, Section 16(a) [30] requires an insider to file an initial report with the Commission disclosing his or her beneficial ownership of all equity securities of the issuer.[31] Section 16(a) also requires insiders to report subsequent changes in such ownership.[32] To prevent misuse of inside information by insiders, Section 16(b) [33] provides the issuer (or shareholders suing on the issuer's behalf) a strict liability private right of action to recover any profit realized by an insider from any purchase and sale (or sale and purchase) of any equity security of the issuer within a period of less than six months.[34]

As applied to ten percent holders, Congress intended Section 16 to reach persons presumed to have access to information because they can influence or control the issuer as a result of their equity ownership.[35] Because Section 13(d) specifically addresses these relationships, the Commission adopted Rule 16a–1(a)(1) to define ten percent holders under Section 16 as persons deemed ten percent beneficial owners under Section 13(d) and the rules thereunder.[36] The Section 13(d) analysis, such as counting beneficial ownership of the equity securities underlying derivative securities exercisable or convertible within 60 days,[37] is imported into the ten percent holder determination for Section 16 purposes. The application of Rule 16a–1(a)(1) is straightforward; if a person is a ten percent beneficial owner as determined pursuant to Section 13(d)

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measure of what Congress considered to be large and rapid acquisitions is Section 13(d)(6)(B), which exempts acquisitions of two percent or less in the preceding twelve months.

[24] *General Aircraft Corp.* v. *Lampert,* 556 F.2d 90, 94 (1st Cir. 1977); *see also* S. Rep. No. 550, at 3 (''But where no information is available about the persons seeking control, or their plans, the shareholder is forced to make a decision on the basis of a market price which reflects an evaluation of the company based on the assumption that the present management and its policies will continue. The persons seeking control, however, have information about themselves and about their plans which, if known to investors, might substantially change the assumptions on which the market price is based.'').

[25] *Takeover Bids, Hearings on 14475 and S. 510 before the Subcomm. on Commerce and Fin. of the H. Comm. on Interstate and Foreign Commerce,* 90th Cong. 12 (1968) (statement of Hon. Manuel F. Cohen, Chairman, U.S. Securities and Exchange Commission, ''But I might ask, how can an investor evaluate the adequacy of the price if he cannot assess the possible impact of a change in control? Certainly without such information he cannot judge its adequacy by the current or recent market price. That price presumably reflects the assumption that the company's present business, control and management will continue. If that assumption is changed, is it not likely that the market price might change?'').

[26] *See* note 6 above.

[27] Except with respect to the discussion of Section 16 (text accompanying notes 45–47), and the statements contained in note 54, this release does not address whether, or under what circumstances, an agreement, contract, or transaction that is labeled a security-based swap (including one which confers voting and/or investment power, grants a right to acquire one or more equity securities, or is used with the purpose or effect of divesting or preventing the vesting of beneficial ownership as part of a plan or scheme to evade the beneficial ownership reporting requirements) would be a purchase or sale of the underlying securit(ies) and treated as such for purposes of the Federal securities laws, instead of a security-based swap. In this regard, among other things, the definition of ''swap'' (and therefore the definition of ''security-based swap'') specifically excludes the purchase or sale of one or more securities on a fixed or contingent basis, unless the agreement, contract, or transaction predicates the purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction. *See* Sections 1a(47)(B)(v) and (vi) of the Commodity Exchange Act, 7 U.S.C. 1a(47)(B)(v) and (vi).

[28] Exchange Act Section 13(d)(1) applies after a person directly or indirectly acquires beneficial ownership, regardless of whether the person has made an acquisition of the equity securities.

[29] 15 U.S.C. 78*l.*

[30] 15 U.S.C. 78p(a).

[31] Insiders file these reports on Form 3 [17 CFR 249.103].

[32] Insiders file transaction reports on Form 4 [17 CFR 249.104] and Form 5 [17 CFR 249.105].

[33] 15 U.S.C. 78p(b).

[34] In addition, insiders are subject to the short sale prohibitions of Section 16(c) [15 U.S.C. 78p(c)].

[35] *See* S. Rep. No. 1455, at 55, 68 (1934); *See also* S. Rep. No. 792, at 20–1 (1934); S. Rep. No. 379, at 21–2 (1963).

[36] Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34–28869 (Feb. 21, 1991) [56 FR 7242].

[37] Rule 13d–3(d).

and the rules thereunder, the person is deemed a ten percent holder under Section 16.[38]

For purposes of Section 16(a) reporting obligations and Section 16(b) short-swing profit recovery, Rule 16a–1(a)(2) uses a different definition of ''beneficial owner.'' Once a person is subject to Section 16, for reporting and profit recovery purposes, Rule 16a–1(a)(2) defines ''beneficial owner'' based on whether the person has or shares a direct or indirect pecuniary interest in the securities. A ''pecuniary interest'' in any class of equity securities means ''the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.''[39] An ''indirect pecuniary interest'' in any class of equity securities includes, but is not limited to ''a person's right to acquire equity securities through the exercise or conversion of any derivative security, whether or not presently exercisable.''[40] ''Derivative securities'' are ''any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege at a price related to an equity security, or similar securities with a value derived from the value of an equity security, but shall not include [* * *] rights with an exercise or conversion privilege at a price that is not fixed.''[41] Equity securities of an issuer are ''any equity security or derivative security relating to an issuer, whether or not issued by that issuer.''[42]

This framework recognizes that holding derivative securities is functionally equivalent to holding the underlying equity securities for Section 16 purposes because the value of the derivative securities is a function of or related to the value of the underlying equity security.[43] Just as an insider's opportunity to profit begins upon purchasing or selling issuer common stock, the opportunity to profit begins when an insider engages in transactions in derivative securities that provide an opportunity to obtain or dispose of the stock at a fixed price.[44] Establishing or increasing a call equivalent position[45] (or liquidating or decreasing a put equivalent position[46]) is deemed a purchase of the underlying security, and establishing or increasing a put equivalent position (or liquidating or decreasing a call equivalent position) is deemed a sale of the underlying security.[47]

Rule 16a–1(a)(2) and the related rules described above recognize the functional equivalence of derivative securities and the underlying equity securities by providing that transactions in derivative securities are reportable, and matchable with transactions in other derivative securities and in the underlying equity.[48] For example, short-swing profits obtained by buying call options and selling the underlying stock, or buying the underlying stock and buying put options, are recoverable. This functional equivalence extends to all fixed-price derivative securities, whether issued by the issuer or a third party, and whether the form of settlement is cash or stock.[49]

E. Application of the Section 16 Beneficial Ownership Regulatory Provisions to Holdings and Transactions in Security-Based Swaps

As described above, solely for purposes of determining who is subject to Section 16 as a ten percent holder, Rule 16a–1(a)(1) uses the beneficial ownership tests applied under Section 13(d) and its implementing rules, including Rules 13d–3(a), 13d–3(b), and Rule 13d–3(d)(1). As a result, for example, a person who has the right to acquire securities that would cause the person to own more than ten percent of a class of equity securities through a security-based swap that confers a right to receive equity at settlement or otherwise would be subject to Section 16 as a ten percent holder under Rule 16a–1(a)(1). Once a person is subject to Section 16, in order to determine what securities are subject to Section 16(a) reporting and Section 16(b) short-swing profit recovery for any insider (whether an officer, director or ten percent holder), Rule 16a–1(a)(2) looks to the insider's pecuniary interest (*i.e.,* opportunity to profit) in the securities. This concept includes an indirect pecuniary interest in securities underlying fixed-price derivative securities, including security-based swaps, whether settled in cash or stock. Consistent with the derivative securities analysis, the Commission has stated that Section 16 consequences would arise from an equity swap transaction where either party to the transaction is a Section 16 insider with respect to a security to which the swap agreement relates.[50] The Commission has provided interpretive guidance regarding how equity swap transactions should be reported,[51] and adopted transaction

[38] For example, the Commission applied an analysis derived from Rule 13d–3(d)(1) in publishing its views regarding when equity securities underlying a security future that requires physical settlement should be counted for purposes of determining whether the purchaser of the security future is subject to Section 16 as a ten percent holder by operation of Rule 16a–1(a)(1). Commission Guidance on the Application of Certain Provisions of the Securities Act of 1933, the Securities Exchange Act of 1934, and Rules thereunder to Trading in Security Futures Products, Release No. 34–46101 (June 21, 2002) [67 FR 43234] (''Futures Interpretive Release'') at Q 7.

[39] Rule 16a–1(a)(2)(i).

[40] Rule 16a–1(a)(2)(ii)(F).

[41] Rule 16a–1(c)(6).

[42] Rule 16a–1(d). Further, Rule 16a–4(a) [17 CFR 240.16a–4(a)] provides that for purposes of Section 16, both derivative securities and the underlying securities to which they relate are deemed to be the same class of equity securities, except that the acquisition or disposition of any derivative security must be separately reported.

[43] For example, the Futures Interpretive Release, at Q&A Nos. 8–13, explains the status of a security future as a derivative security for purposes of Section 16(a) reporting and Section 16(b) short-swing profit recovery.

[44] Ownership Reports and Trading By Officers, Directors and Principal Security Holders, Release No. 34–28869, at Section III.A (Feb. 21, 1991) [56 FR 7242].

[45] Rule 16a–1(b) provides that a ''call equivalent position'' is ''a derivative security position that increases in value as the value of the underlying equity security increases, including, but not limited to, a long convertible security, a long call option, and a short put option position.''

[46] Rule 16a–1(h) provides that a ''put equivalent position'' is ''a derivative security position that increases in value as the value of the underlying equity decreases, including, but not limited to, a long put option and a short call option.''

[47] Rule 16b–6(a).

[48] Rule 16b–6(b) generally exempts from Section 16(b) short-swing profit recovery the exercise or conversion of a fixed-price derivative security, provided that it is not out-of-the-money. Rule 16b–6(c) provides guidance for determining short-swing profit recoverable from transactions involving the purchase and sale or sale and purchase of derivative and other securities.

[49] Former Rule 16a–1(c)(3), adopted in Release No. 34–28869, excluded from the definition of ''derivative securities'' ''securities that may be redeemed or exercised only for cash and do not permit the receipt of equity securities in lieu of cash, if the securities either: (i) Are awarded pursuant to an employee benefit plan satisfying the provisions of [former] § 240.16b–3(c); or (ii) may be redeemed or exercised only upon a fixed date or dates at least six months after award, or upon death, retirement, disability or termination of employment.'' As a corollary to adopting a broader Rule 16b–3 exemption, the Commission rescinded former Rule 16a–1(c)(3) in 1996, stating that ''because the opportunity for profit based on price movement in the underlying stock embodied in a cash-only instrument is the same as for an instrument settled in stock, cash-only instruments should be subject to Section 16 to the same extent as other issuer equity securities.'' Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34–37260, at Section III.A (May 31, 1996) [61 FR 30376].

[50] Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34–34514, at Section III.G (Aug. 10, 1994) [59 FR 42449]; Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Release No. 34–37260, at Section IV.H (May 31, 1996) [61 FR 30376].

[51] Each report must provide the following information: (1) The date of the transaction; (2) the term; (3) the number of underlying shares; (4) the exercise price (*i.e.,* the dollar value locked in); (5) the non-exempt disposition (acquisition) of shares at the outset of the term; (6) the non-exempt acquisition (disposition) of shares at the end of the

Continued

code ''K'' to be used in addition to any other applicable code in reporting equity swap and similar transactions so that they can be easily identified.[52] An equity swap involving a single security, or a narrow-based security index, is a security-based swap as defined in Section 3(a)(68).

II. Discussion of the Readopted Rules and Commission Confirmation

New Section 13(o) provides that a person shall be deemed a beneficial owner of an equity security based on the purchase or sale of a security-based swap only to the extent we adopt rules after making certain determinations with respect to security-based swaps and consulting with the prudential regulators and the Secretary of the Treasury. The regulatory provisions under which beneficial ownership determinations have been made to date with respect to security-based swaps were enacted or adopted before Section 13(o). Accordingly, we are readopting the relevant portions of Rules 13d–3 and 16a–1 following consultation with the prudential regulators and the Secretary of Treasury to assure that these provisions continue to apply to a person who purchases or sells a security-based swap upon effectiveness of Section 13(o).

The purpose of this rulemaking is solely to preserve the regulatory *status quo* and provide the certainty and protection that market participants have come to expect with the existing disclosures required by the rules promulgated under Sections 13(d), 13(g) and 16(a). While the use of security-based swaps has not been frequently disclosed in Schedule 13D and 13G filings, we are readopting Rules 13d–3(a), (b) and (d)(1) and the relevant portions of Rules 16a–1(a)(1) and (a)(2) to further the policy objectives of, and foster compliance with, these rules upon the effectiveness of Section 13(o).

Given the language in Section 13(o), as well as the newly amended Sections 13(d) and 13(g),[53] we are readopting these rules to remove any doubt that they will continue to allow for the same determinations of beneficial ownership that they do today. Readoption of these rule provisions is intended to confirm that persons who use security-based swaps remain subject to the Section 13(d), Section 13(g) and Section 16 regulatory regimes to the same extent such persons were prior to readoption. Moreover, the rulemaking is designed to preserve the private right of action provided by Section 16(b) and not disturb any other existing right of action.

Section 13(o), once effective, will not render the existing beneficial ownership regulatory provisions inapplicable to persons who obtain beneficial ownership independently from a security-based swap. For example, Rule 13d–3(d)(1) will continue to apply to persons who obtain a right to acquire equity securities if the right does not arise from the purchase or sale of a security-based swap. Rights, options, warrants, or conversion or certain revocation privileges, if acquired or held by persons under circumstances that do not arise from the purchase or sale of a security-based swap, will remain subject to Sections 13(d), 13(g) and 16 and may continue to be treated under Rule 13d–3(d)(1) as the acquisition of beneficial ownership,[54] and Rules 16a–1(a)(1) and 16a–1(a)(2) will continue to apply. Furthermore, Schedule 13D will continue to require certain disclosures relating to the purchase or sale of security-based swaps notwithstanding Section 13(o).[55]

A. Beneficial Ownership Determinations Under Section 13

Section 13(o) provides that a person shall be deemed to acquire beneficial ownership of an equity security based on the purchase or sale of a security-based swap only to the extent that the Commission meets certain conditions and adopts a rule. Although readoption of Rule 13d–3(a), Rule 13d–3(b), and Rule 13d–3(d)(1) is being made in part pursuant to Section 13(o), we are not making any revision to the existing rule text. The rules we are readopting are the same as the existing rules in all respects.

1. Rule 13d–3(a)

We are readopting without change Rule 13d–3(a) to address any uncertainty with regard to the application of Rule 13d–3(a) to a person who purchases or sells a security-based swap. Under readopted Rule 13d–3(a), a determination may continue to be made that a beneficial owner of equity securities includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares voting power and/or investment power over the securities based on the purchase or sale of a security-based swap.

Following consultation with the prudential regulators[56] and the Secretary of the Treasury, we believe that:

- A person's possession of voting and/or investment power in an equity security based on the purchase or sale of a security-based swap is no different from voting or investment power in an equity security that exists independently from a security-based swap when (1) a security-based swap confers, or (2) an arrangement, understanding or relationship based on the purchase or sale of the security-based swap conveys, voting and/or investment power in an equity security. Security-based swaps therefore can provide incidents of ownership comparable to direct ownership of the underlying equity security within the meaning of Section 13(o) to the extent that the security-based swap confers, or

term (and at such earlier dates, if any, where events under the equity swap cause a change in a call or put equivalent position); (7) the total number of shares held after the transaction; and (8) any other material terms. Release No. 34–37260, at Section IV.H.

[52] General Instruction 8 to Form 4 [17 CFR 249.104] (U.S. SEC 1475 (08–07)) and Form 5 [17 CFR 249.105] (U.S. SEC 2270 (1–05)), as amended in Release No. 34–37260, at Section IV.I.

[53] *See* Section 766(b) of the Dodd-Frank Act, which amends Sections 13(d) and 13(g) to provide that a person ''becomes or is deemed to become a beneficial owner * * * upon the purchase or sale of a security-based swap that the Commission may define by rule * * *.''

[54] These rights to acquire beneficial ownership are not security-based swaps within the meaning of Section 13(o); rather, they are purchases and sales of securities. In this regard, the definition of ''swap'' in Section 721 of the Dodd-Frank Act (and therefore the definition of ''security-based swap'') excludes purchases and sales of securities, whether on a fixed or contingent basis. Under the Dodd-Frank Act, the term ''security'' is as defined in the Securities Act and the Exchange Act, which includes options, warrants, and rights to subscribe to or purchase a security and any convertible securities as well as the securities issuable upon exercise or conversion of such securities. In addition, Section 721 of the Dodd-Frank Act excludes from the definition of ''swap'' any put, call, straddle, option or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof, that is subject to the Securities Act of 1933 and the Exchange Act. Furthermore, Section 13(o) does not affect the treatment of ''security-based swap agreements'' as defined in the Dodd-Frank Act. For example, Section 762(d)(5) of the Dodd-Frank Act clarifies that Section 16 continues to apply to security-based swap agreements.

[55] For example, beneficial owners who file a Schedule 13D and use a security-based swap will remain subject to the obligation to comply with Items 6 (''Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer'') and 7 (''Material To Be Filed as Exhibits'') and provide disclosures relating to the security-based swap depending upon the security-based swap's terms. In addition, beneficial owners who file a Schedule 13G pursuant to Rule 13d–1(b) or otherwise rely upon Rule 13d–1(b) to govern a future reporting obligation may be required to make disclosures on Schedule 13D instead of based upon their purchase or sale of a security-based swap. *See* In the Matter of Perry Corp., Release No. 34–60351 (July 21, 2009).

[56] Our staff has consulted with the Federal Reserve, the Office of the Comptroller of the Currency, the Farm Credit Administration, the Federal Housing Finance Agency, and the Federal Deposit Insurance Corporation. Our staff also consulted with the CFTC.

an arrangement, understanding or relationship based upon the purchase or sale of the security-based swap conveys, voting and/or investment power in an equity security; and

• Retaining the existing regulatory treatment of security-based swaps in Rule 13d–3(a) is necessary to achieve the purpose of Section 13 so that Sections 13(d) and 13(g) continue to require the filing of beneficial ownership reports that produce disclosure by persons who have the ability or potential to change or influence control of the issuer. In addition, these persons may have the means to acquire significant amounts of equity securities wholly or partly based upon the purchase or sale of a security-based swap. As a result, these persons may have the potential to effect a change of control transaction or preserve or influence control of an issuer. In the case of Schedule 13D filers, these persons would be required to disclose their plans or proposals. Disclosures made in beneficial ownership reports are in the public interest and necessary for the protection of investors because they provide information about certain transactions and related acquisitions of beneficial ownership that: Could disclose a potential shift in corporate control; impact the transparency and efficiency of our capital markets; and contribute to price discovery.

2. Rule 13d–3(b)

We are readopting without change Rule 13d–3(b) to address any uncertainty with regard to the continued application of Rule 13d–3(b) to a person who purchases or sells a security-based swap. Rule 13d–3(b) provides that a person is deemed to be a beneficial owner if that person uses any contract, arrangement, or device as a means to divest or prevent the vesting of beneficial ownership as part of a plan or scheme to evade the beneficial ownership reporting requirements. Under readopted Rule 13d–3(b), any person that uses a security-based swap as part of a plan or scheme to evade reporting beneficial ownership continues to be subject to the requirement to disclose the accumulation of an influential or control position in a public issuer.

Following consultation with the prudential regulators and the Secretary of the Treasury, we believe that:

• A person's use of a security-based swap to divest or prevent the vesting of beneficial ownership as part of a plan or scheme to evade the application of Sections 13(d) or 13(g) is no different from a plan or scheme that uses a contract, arrangement or device that exists independently from a security-based swap. In this context, a person would be deemed to have beneficial ownership, and thus incidents of ownership comparable to direct ownership within the meaning of Section 13(o), but for the plan or scheme based in whole or in part upon the purchase or sale of a security-based swap; and

• Retaining the existing regulatory treatment of security-based swaps in Rule 13d–3(b) is necessary to achieve the purpose of Section 13 so that Sections 13(d) and 13(g) continue to require the filing of beneficial ownership reports that produce disclosure by persons who have the ability or potential to change or influence control of the issuer. In addition, these persons may have the means to acquire significant amounts of equity securities based in whole or in part upon the purchase or sale of a security-based swap, and therefore the potential to effect a change of control transaction or preserve or influence control of an issuer. In the case of Schedule 13D filers, these persons would be required to disclose their plans or proposals. Disclosures made in beneficial ownership reports are in the public interest and necessary for the protection of investors because they provide information about certain transactions and related acquisitions of beneficial ownership that: Could disclose a potential shift in corporate control; impact the transparency and efficiency of our capital markets; and contribute to price discovery.

3. Rule 13d–3(d)(1)

We are readopting without change Rule 13d–3(d)(1) to address any uncertainty with regard to the continued application of Rule 13d–3(d)(1) to a person who purchases or sells a security-based swap. Rule 13d–3(d)(1) provides that a person will be deemed to be a beneficial owner of equity securities if the person has the right to acquire beneficial ownership of the securities within 60 days, or at any time if the right is held for the purpose of changing or influencing control. Readopted Rule 13d–3(d)(1) continues to apply to any person that obtains such a right based on the purchase or sale of a security-based swap.

The Commission has long recognized the importance of having the beneficial ownership reporting regime account for contingent interests in equity securities arising from investor use of derivatives, such as options, warrants or rights. The Commission adopted Rule 13d–3, the predecessor to Rule 13d–3(d)(1), on August 30, 1968,[57] approximately one month after Congress enacted Section 13(d).[58] The Commission also has treated futures contracts for equity securities the same as options, warrants, or rights for purposes of determining beneficial ownership.[59] When a right to acquire may be exercised within 60 days or less, or if a right has been acquired for the purpose or with the effect of changing or influencing control of the issuer of securities, we believe that treating the holder of the right as if the person is a beneficial owner under Rule 13d–3(d)(1) is necessary to achieve the regulatory purpose of Section 13 given the person's potential to influence or change control of the issuer.[60]

Following consultation with the prudential regulators and the Secretary of the Treasury, we believe that:

• A person's right to acquire an equity security within 60 days based on the purchase or sale of a security-based swap is no different from a right to acquire the underlying equity security that exists independently from a security-based swap. A right to acquire an equity security within 60 days is comparable to direct ownership of the equity security because direct ownership is contingent, in some cases, only upon the exercise of that right and may result in the potential to change or influence control of the issuer upon acquisition of the equity security for which the right is exercisable. Security-based swaps, therefore, can provide incidents of ownership comparable to direct ownership of the underlying equity security within the meaning of Section 13(o) to the extent that the security-based swap confers a right to acquire an equity security within 60 days;

• A person who acquires or holds, with the purpose or effect of changing or influencing control of an issuer, a right to acquire an equity security based on the purchase or sale of a security-based swap is no different from a person who acquires or holds a right to acquire an equity security with the purpose of changing or influencing control of the issuer that exists independently from a security-based swap. Rights acquired or

[57] Acquisitions, Tender Offers, and Solicitations, Release No 34–8392 (Aug. 30, 1968) [33 FR 14109].

[58] *See* Williams Act, Public Law 90–439, 82 Stat. 454 (July 29, 1968).

[59] The Futures Interpretive Release provides two examples at Q & A No. 17 that explain when equity securities underlying a security future that requires physical settlement should be counted for purposes of determining whether the purchaser of the security future is subject to Regulation 13D–G by operation of Rule 13d–3(d)(1).

[60] *See* Filing and Disclosure Requirements Relating to Beneficial Ownership, Release No. 34–14692 (Apr. 21, 1978) [43 FR 18484].

held in this context may be used in furtherance of a plan or proposal to change control of the issuer, and such rights to acquire equity securities may otherwise influence an issuer if held by a person intending to effect a change of control transaction or preserve or influence control of an issuer. Security-based swaps, therefore, can provide incidents of ownership comparable to direct ownership of the underlying equity security within the meaning of Section 13(o) to the extent that the security-based swap confers a right to acquire an equity security to a person that holds the right with the purpose or with the effect of changing or influencing control of the issuer or otherwise in connection with or as a participant in any transaction having such purpose or effect; and

• Retaining the existing regulatory treatment of security-based swaps under Rule 13d–3(d)(1) is necessary to achieve the purpose of Section 13 so that Sections 13(d) and 13(g) continue to require the filing of beneficial ownership reports that disclose certain transactions by persons who have the ability or potential to change or influence control of the issuer. These persons may have the means to acquire significant amounts of equity securities based in whole or in part upon the purchase or sale of a security-based swap, and therefore the potential to effect a change of control transaction or preserve or influence control of an issuer. In the case of Schedule 13D filers, these persons would be required to disclose their plans or proposals. Disclosures made in beneficial ownership reports are in the public interest and necessary for the protection of investors because they provide information about certain transactions and related acquisitions of beneficial ownership that: Could disclose a potential shift in corporate control; impact the transparency and efficiency of our capital markets; and contribute to price discovery.

B. Section 16 Beneficial Ownership Rules

1. Rule 16a–1(a)(1)

We are readopting without change a portion of Rule 16a–1(a)(1) [61] to preserve, solely for purposes of determining whether a person is a ten percent holder, the application of the relevant provisions within Rule 13d–3 to a person who uses a security-based swap. Readoption of Rule 16a–1(a)(1) does not change the rule's provision that shares held by institutions eligible to file beneficial ownership reports on Schedule 13G that are held for clients in a fiduciary capacity in the ordinary course of business are not counted for purposes of determining ten percent holder status.[62]

Following consultation with the prudential regulators and the Secretary of the Treasury, we believe that:

• For the same reasons and in the same circumstances as described above for Rule 13d–3(a), Rule 13d–3(b) and Rule 13d–3(d)(1), solely for purposes of determining whether a person is a ten percent holder subject to Section 16, the purchase or sale of a security-based swap, or class of security-based swap, can provide incidents of ownership comparable to direct ownership of the equity security within the meaning of Section 13(o); and

• The inclusion of equity securities based on the purchase or sale of a security-based swap, or class of security-based swap, for purposes of calculating ten percent holder status is necessary to achieve the purpose of Section 16, so that Section 16 continues to reach all persons that, under the Section 16 regime, are presumptively deemed to have access to inside information based on influence or control of the issuer through ownership of equity securities.

2. Rule 16a–1(a)(2)

We are readopting without change a portion of Rule 16a–1(a)(2) [63] solely to preserve the existing Section 16(a) reporting of security-based swap holdings and transactions and, correspondingly, to prevent the potential use of security-based swaps to engage in short-swing trading outside the scope of Section 16(b) short-swing profit recovery. Readoption does not change or otherwise affect any aspect of the pecuniary interest analysis and treatment of derivative securities under Section 16.

Following consultation with the prudential regulators and the Secretary of the Treasury, we believe that:

• Because an insider's opportunity to profit through a security-based swap is no different from the opportunity to profit through transactions in any other fixed-price derivative security, and hence no different from the opportunity to profit through transactions in the underlying equity security, holdings and transactions in security-based swaps that are fixed-price derivative securities can provide incidents of ownership comparable to direct ownership of the underlying equity security within the meaning of Section 13(o); and

• Retaining the existing treatment of security-based swaps is necessary to achieve the purpose of Section 16 so that Section 16 continues to reach holdings and transactions that insiders can potentially use to profit based on misuse of inside information.

III. Paperwork Reduction Act

The readopted rules affect ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995.[64] 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. We already have control numbers for Schedules 13D (OMB Control No. 3235–0145) and 13G (OMB Control No. 3235–0145) and Forms 3 (OMB Control No. 3235–0104), 4 (OMB Control No. 3235–0287), and 5 (OMB Control No. 3235–0362). These schedules and forms contain item requirements that outline the information a reporting person must disclose.

A. Background

We are readopting without change portions of the rules enabling determinations of beneficial ownership to be made for purposes of Sections

[61] We are readopting the portion of Rule 16a–1(a)(1) that precedes the proviso applicable to qualified institutions. The relevant portion of Rule 16a–1(a)(1) that we are readopting reads as follows: ''(a) The term *beneficial owner* shall have the following applications: (1) Solely for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered pursuant to section 12 of the Act, the term ''beneficial owner'' shall mean any person who is deemed a beneficial owner pursuant to section 13(d) of the Act and the rules thereunder. * * *''

[62] Securities not held in such a fiduciary capacity, however, must be counted in determining whether a Schedule 13G qualified institutional investor is a ten percent holder. This exclusion applies only to qualified institutions who acquire or hold securities of the issuer in the ordinary course of business without the purpose or effect of influencing or changing control, and thereby qualify to use Schedule 13G pursuant to Rule 13d–1(b)(1)(i). The exclusion does not apply to persons who qualify to use Schedule 13G as passive investors pursuant to Rule 13d–1(c), or as exempt investors pursuant to Rule 13d–1(d).

[63] We are readopting the portion of Rule 16a–1(a)(2) that precedes subparagraph (ii). The relevant portion of Rule 16a–1(a)(2) we are readopting reads as follows: ''(2) Other than for purposes of determining whether a person is a beneficial owner of more than ten percent of any class of equity securities registered under Section 12 of the Act, the term *beneficial owner* shall mean any person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, has or shares a direct or indirect pecuniary interest in the equity securities, subject to the following: (i) The term *pecuniary interest* in any class of equity securities shall mean the opportunity, directly or indirectly, to profit or share in any profit derived from a transaction in the subject securities.''

[64] 44 U.S.C. 3501 *et seq.*

13(d), 13(g) and 16 of the Exchange Act. Readoption is intended to confirm that following the effective date of Section 13(o), persons who use security-based swaps will remain within the scope of these rules to the same extent as they were before the readoption. We did not receive any comments concerning our Paperwork Reduction Act Reduction Analysis in the proposing release.

B. Burden and Cost Estimates Related to the Readoption

Preparing and filing a report on any of these schedules or forms is a collection of information. The hours and costs associated with preparing the disclosure, filing the schedules or forms and retaining records required by these rules constitute reporting and cost burdens imposed by each collection of information. Readoption of the rules ensures that reporting persons will remain obligated to disclose the same information that they were previously required to report on these schedules or forms. We therefore believe that the overall information collection burden will remain the same because beneficial ownership will remain reportable on the same basis as before the readoption.

IV. Economic Analysis

A. Introduction

Section 23(a)(2) of the Exchange Act requires us, when adopting rules under the Exchange Act, to consider the impact on competition that the rules we adopt would have, and prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of that Act.[65] Further, Section 3(f) of the Exchange Act[66] and Section 2(c) of the Investment Company Act[67] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation. We have considered and discussed below the effects of the readopted rules on efficiency, competition, and capital formation, as well as the benefits and costs associated with the rulemaking.

In order to more fully analyze the potential effects of readopting portions of our rules to preserve the regulatory *status quo* upon the effectiveness of Section 13(o), we have performed the analysis below in two separate ways. First, we analyze the impact of the readoption compared to the *status quo,* in which the rules already apply to a person who purchases or sells a security-based swap. Second, we analyze the impact as if our rules did not already apply to persons who purchase or sell security-based swaps. We believe the economic effect will be minimal. Commentators supported the readopted rules on the grounds that they preserved the regulatory *status quo.* They did not identify any cost that would result from the rulemaking.

B. Benefits and the Impact on Efficiency, Competition and Capital Formation

1. When the Rules We Readopt Already Apply to Persons Who Purchase or Sell Security-Based Swaps

Readoption of certain provisions of Rule 13d–3 and Rule 16a–1 preserves the continued administration of existing rules adopted to improve the transparency of information available to investors, issuers and the marketplace. Readoption is intended to preserve that transparency regarding beneficial ownership positions and the intentions of persons who hold such positions, as well as the holdings of and transactions by Section 16 insiders. We are readopting, without change, rules that, when applied, may result in disclosure of beneficial ownership and insiders' holdings and transactions in equity securities. In addition, one of the readopted rules, Rule 16a–1(a)(2), also identifies transactions that may be subject to the private right of action to recover short-swing profit for the issuer provided by Section 16(b).

The rules are readopted solely to preserve the regulatory *status quo* regarding beneficial ownership reporting under Sections 13(d) and (g), Section 16 insider status as a ten percent holder, insider holding and transaction reporting under Section 16(a), and insider short-swing profit liability under Section 16(b). Continued application of the rules also will provide certainty regarding the Section 16(b) private right of action to recover insiders' short-swing profits for the issuer. Because the rules we readopt are already in place and will remain unchanged, readoption and effectiveness of these rules should have minimal benefits, and little, if any, new effect on efficiency, competition, or capital formation or on the persons required to make the disclosures as a result of the application of the rules. Beneficial owners who use security-based swaps are already subject to these rules and are required to make any applicable disclosures. Because only a limited number of beneficial ownership reports contain disclosure that relates to security-based swaps, the potential effect of this rulemaking should be minimal. Shareholders, issuers, market participants and any other persons who rely upon the disclosures being made as a result of application of the rules similarly will receive little, if any, new benefit and are unlikely to experience any new impact on efficiency, competition or capital formation because the regulatory environment will remain the same as before readoption.

2. If the Rules We Readopt Did Not Already Apply to Persons Who Purchase or Sell Security-Based Swaps

If one were to analyze the effect of readopting these rules as if they did not already apply to a person who purchases or sells a security-based swap, there would be new benefits, as well as a beneficial effect on efficiency, competition and capital formation. These benefits could extend to persons relying upon these disclosures, including prospective investors, shareholders, issuers, and other market participants. These benefits also may extend to beneficial owners required to comply with disclosure requirements as a result of the application of the rules we readopt. Any such benefits, if realized, would be attributable both to the removal of any regulatory uncertainty and to the resulting preservation of transparency.

Applying the rules to a person who purchases or sells a security-based swap confers a benefit to market participants by providing market transparency and removing, in some cases, information asymmetry. Prospective investors, shareholders, issuers and other market participants benefit from the transparency provided through disclosure made available by persons subject to Sections 13 and 16. For example, a Schedule 13D filing may disclose a potential change of control transaction and assist a shareholder in making an investment decision that would maximize the return on an investment. Disclosures made on Schedule 13G may identify for the marketplace important investment decisions made by institutional investors and other large shareholders or may provide notice to investors, issuers and the market regarding voting blocks of securities that have the potential to affect or influence control of an issuer.

Applying the rules to a person who purchases or sells a security-based swap assures that Section 16 will reach a person that, under the Section 16 regime, is presumptively deemed to have access to inside information based

[65] 15 U.S.C. 78w(a)(2).

[66] 15 U.S.C. 78c(f).

[67] 15 U.S.C. 80a–2(c).

on influence or control of the issuer through equity ownership. In addition, applying the rules to a person who purchases or sells a security-based swap means that an insider (whether an officer, director, or ten percent holder) is required to report beneficial ownership with respect to transactions and holdings in a security-based swap that confers an indirect pecuniary interest in issuer equity securities. These reports, like other Section 16(a) reports, may provide shareholders and other market participants with useful information regarding insiders' views of the performance or prospects of the issuer.

Transparency of trading by persons covered by Sections 13 and 16, and transparency of accumulations of material ownership blocks or voting power based on the purchase or sale of a security-based swap, would increase informational efficiency in securities markets in particularly important areas, especially where a Schedule 13D filing may be the first required disclosure of an intended change of control of an issuer. Transparency confers a benefit by assuring the availability of information upon which investors may rely to make informed investment and voting decisions.

The level of transparency provided by Rules 13d–1(a) and 16a–1 also may contribute to market efficiency because it could help facilitate the accurate pricing of securities. If the rules did not apply to a person who purchases or sells a security-based swap, investors and market participants, such as financial analysts and broker dealers, would not have information regarding the use of security-based swaps by persons subject to Sections 13 and 16, including major investors. The transparency provided by the application of our rules should help the market accurately price securities and may enable purchasers and sellers of securities to receive a benefit by avoiding costs, if any, associated with participation in transactions based on mispriced securities. For example, market efficiency should increase because the market will have readily available information about acquisitions of securities that involve the potential to change or influence control of an issuer in connection with the purchase or sale of a security-based swap. If persons who purchase or sell security-based swaps were excluded from this regulatory scheme, an incentive could arise to use security-based swaps to affect or influence the outcome of a change of control transaction. In addition, the pricing of a security would not readily reflect, if at all, ownership interests in the issuer derived from security-based swaps. In such circumstances, the application of the rules we readopt would have the benefit of eliminating this incentive while increasing the quality of information available to price securities.

Public availability of information about the existence of persons who use security-based swaps and have the potential to change or influence control of the issuer affects competition in the market for corporate control. If bidders that use securities-based swaps comply with the beneficial ownership disclosure requirements, the balance Congress sought to strike between issuers and prospective bidders will not tip away from issuers.[68] Providing equal access to information regarding persons who use security-based swaps and have the ability to change or influence control of an issuer reinforces a legislative objective of Section 13(d) by assuring that a person will not be able to implement a change of control transaction by means of a large, undisclosed position. Applying our rules to persons who purchase or sell security-based swaps enables issuers to consider information about competitors in the market for corporate control, including those who may be able to offer a new or competing strategic alternative. Schedule 13D and 13G filings also may deliver greater certainty to market participants who make strategic, voting, or investment decisions wholly or partly based upon the information disclosed, and could reduce speculation about future plans or proposals relating to an issuer. For example, market participants may not be discouraged from introducing strategic plans or proposals to an issuer out of concern that an undisclosed interest in the issuer derived from a security-based swap could interrupt execution of their plan or proposal.

Section 16 is intended to provide the public with information about the securities transactions and holdings of officers, directors, and ten percent holders, and to mitigate informational advantages they may have in trading issuer securities. Applying Rule 16a–1(a)(1) to beneficial ownership based on the purchase or sale of a security-based swap discourages persons from unfairly profiting in trades based on the ability to become a ten percent holder partly or wholly based on the use of security-based swaps without becoming subject to Section 16. Applying Rule 16a-1(a)(2), which defines ''beneficial ownership'' based on pecuniary interest in issuer equity securities, to persons who purchase or sell security-based swaps prevents the development of a trading market potentially favoring any insider (whether an officer, director, or ten percent holder) to the extent that:

- Holdings and transactions involving security-based swaps may not be reported, thereby depriving investors of potentially useful information; and
- Insiders have the opportunity to misuse their potential informational advantages in trading without regard to potential short-swing profit liability.

Making information publicly available generally lowers an issuer's cost of capital and facilitates capital formation, in comparison to what the cost of capital otherwise might be if the rules did not already apply to a person who purchases or sells a security-based swap. If the rules apply to a person who purchases or sells a security-based swap, the resulting transparency could favorably affect investor confidence in the capital markets and thereby not compromise capital formation.[69] If our rules require persons who use security-based swaps to provide disclosures in Schedules 13D and 13G and Forms 3, 4 and 5, investors will not insist on a higher risk premium in publicly-traded equity securities and consequently reduce capital formation. Informed investor decisions generally promote capital formation.[70]

In addition, market participants would benefit from the predictability associated with a regulatory environment in which all persons who have the potential to influence or change control of an issuer are definitively subject to the same beneficial ownership reporting rules. If there were questions as to whether our rules applied to persons who purchase or sell security-based swaps, market participants would have to accept more operational and legal risk because of the potentially unregulated treatment of persons who use security-based swaps with incidents of ownership comparable to direct ownership, as well as persons who have arrangements, understandings, or relationships concerning voting and/or investment power, the opportunity to acquire equity securities, or a plan or scheme to evade

[68] *See* note 22 above.

[69] *See* Luigi Guiso *et al., Trusting the Stock Market,* 63 J. Fin. 2557 (2008) (finding that trust in the fairness of the financial system is correlated with higher levels of stock market participation).

[70] *See* Merritt B. Fox, Randall Morck, Bernard Yeung & Artyom Durnev, *Law, Share Price Accuracy, and Economic Performance: the New Evidence,* 102 Mich L. Rev. 331 (2003) (empirical study of the value of disclosure requirements in enhancing investment efficiency); *see also Studies in Resource Allocation Processes* at p. 413 (Kenneth J. Arrow & Leonid Hurwicz eds., 2007) (explaining the relationship between informational efficiency and Pareto efficiency of resource allocation).

Sections 13(d) and 13(g) in connection with the purchase or sale of a security-based swap. By applying our rules to all persons who have the potential to influence or change control of the issuer, market participants would have assurance that securities pricing may reflect information derived from security-based swaps when Sections 13(d), 13(g), and 16 require reporting. The certainty provided by this consistent regulatory treatment should foster investor confidence and participation in the capital markets generally, and should not impair capital formation.

The rules we readopt also would provide the Commission access to ownership and transaction information that would not be available if the rules did not already apply to a person who purchases or sells a security-based swap. The availability of this data should enhance the ability of the Commission and its staff to study and address issues that relate to this information. Ready access to this information also will continue to enable the Commission to exercise efficiently its enforcement mandate in this market segment, and thereby confer a benefit to all market participants by offering assurance that the integrity of security pricing is protected, and is otherwise consistent with the legislative purpose of Sections 13(d), 13(g), 13(o), and 16.

C. Costs and the Impact on Efficiency, Competition and Capital Formation

1. When the Rules We Readopt Already Apply to Persons Who Purchase or Sell Security-Based Swaps

We believe that the rules we readopt will not, as a practical matter, impose any new costs on market participants, given that the rulemaking is intended only to preserve the regulatory *status quo.* Although it is difficult to determine the number of entities and the costs to entities that are required to comply with the rules we readopt, we believe that readoption of the rules will result in minimal, if any, costs to any person or entity (either small or large) and will have little, if any, burden on efficiency, competition or capital formation because the regulatory environment will remain unchanged.

Regulation 13D–G currently applies to any person that acquires or is deemed to acquire or hold beneficial ownership of more than five percent of certain classes of equity securities. The readoption of the relevant provisions of Rule 13d–3 will not result in any change to the beneficial ownership reporting obligations of the persons previously subject to the beneficial ownership regulatory provisions. Similarly, Section 16 applies to any person that acquires or is deemed to acquire more than ten percent of certain classes of equity securities, and the readoption of Rule 16a–1(a)(1) will not result in any change in determining whether a person is subject to Section 16 as a ten percent holder. Further, for all insiders, the requirements for Section 16(a) reporting and Section 16(b) liability are based on whether the insider has a pecuniary interest in the securities, including indirectly through ownership of and transactions in fixed-price derivative securities, such as security-based swaps, whether settled in cash or stock. Accordingly, the readoption of Rule 16a–1(a)(2) will not result in any change in determining reportable holdings and transactions, or transactions subject to short-swing profit recovery.

Because the rules we readopt already apply in determining whether a person is required to report beneficial ownership and insiders' holdings and transactions on Schedules 13D and 13G and Forms 3, 4 and 5, we do not believe the readopted rules will alter the costs associated with compliance. These schedules and forms already prescribe beneficial ownership information that a reporting person must disclose, and the rulemaking does not broaden the scope of the information required to be reported on the respective schedules and forms. The compliance burden associated with completion of the relevant schedule or form may be greater or lesser depending on the relative simplicity of the beneficial ownership interest. We recognize that the cost of complying with the beneficial ownership reporting regime can include the cost of analyzing whether the particular interest requires reporting. If it is determined that the interest held constitutes beneficial ownership, and the amount of the beneficial ownership interest exceeds the relevant threshold, the owner must complete and file a schedule and/or form. The compliance burden associated with the readopted rules, however, including costs associated with legal and other professional fees, may decrease because of the regulatory certainty that readoption provides. Furthermore, the persons incurring this compliance burden may already be subject to a reporting obligation based on an earlier application of these rules, and may not be reporting beneficial ownership for the first time as a direct result of the purchase or sale of security-based swaps.

Under the readopted rules, reporting persons will remain obligated to disclose the information currently required to be reported on these schedules or forms. We therefore believe that the overall compliance burden of the rules will remain the same. In addition, we do not believe that compliance costs, or the disclosure provided to effect compliance, will affect competition among filers.

We also believe that shareholders, issuers, market participants and any other persons who rely upon the disclosures being made as a result of application of the rules similarly will not be subjected to any new cost, or experience any new impact on efficiency, competition or capital formation because the rules we readopt are already in place and will remain unchanged.

2. If the Rules We Readopt Did Not Already Apply to Persons Who Purchase or Sell Security-Based Swaps

Costs could increase for a person who purchases or sells a security-based swap and immediately or eventually incurs the cost of filing or amending a beneficial ownership report if the person did not already determine that a reporting obligation existed based on his or her purchase or sale of a security-based swap. Further, an insider could incur costs from potential short-swing profit recovery arising out of a transaction in a security-based swap.

Application of our rules to a person who purchases or sells a security-based swap may affect competition. For example, a person who becomes a ten percent holder partly or wholly based on the use of a security-based swap would not be in a position to profit in trades prompted by a statutorily presumed informational advantage accentuated by the absence of a reporting requirement. In addition, beneficial owners who compete in the market for corporate control would lose a competitive advantage upon the required disclosure of their beneficial ownership positions and any plans or proposals.

Upon application of the rules we readopt, beneficial owners may accomplish certain objectives with less efficiency. For example, the completion of change of control transactions may be delayed due to potential interruptions that may arise or alternatives that might emerge as a result of public disclosures. If our rules did not already apply to a person who purchases or sells a security-based swap, that person could accumulate a large beneficial ownership position through the use of a security-based swap without public disclosure. This beneficial ownership position otherwise could have been used to implement or influence the outcome of

a change of control transaction without alerting an issuer or the marketplace of these intentions. We believe, however, that the benefits of our readopted rules justify these costs.

The impact, if any, of the rule readoption on capital formation should be insignificant. Compliance costs arising under the beneficial ownership reporting regime based on the purchase or sale of a security-based swap are not expected to redirect capital that otherwise could have been allocated to capital formation. Capital formation should not be affected by a possible decline in the use of security-based swaps resulting from the application of our rules to a person who purchases or sells a security-based swap, given that capital formation ordinarily is not dependent upon the proceeds from transactions in security-based swaps.

V. Regulatory Flexibility Act Certification

We certified pursuant to 5 U.S.C. 605(b) that this readoption of our rules would not have a significant economic impact on a substantial number of small entities. This rulemaking relates to beneficial ownership reporting and reporting by insiders of their transactions and holdings. Readoption does not amend existing rules or introduce new rules, and relates only to the readoption of existing rules. For this reason, it does not change the regulatory *status quo* and therefore should not have a significant economic impact on a substantial number of small entities.

The proposing release encouraged written comment regarding this certification. None of the commentators addressed the certification or described any impact that this readoption would have on small entities.

VI. Statutory Authority

The readoption of rules contained in this release is made under the authority set forth in Sections 3(a)(11), 3(b), 13, 16, 23(a) of the Exchange Act and Sections 30 and 38 of the Investment Company Act of 1940.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission amends Title 17, chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for Part 240 is revised and the following citations are added in numerical order to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e,78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.13d–3 is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).

Section 240.16a–1(a) is also issued under Public Law 111–203 § 766, 124 Stat. 1799 (2010).

* * * * *

Dated: June 8, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–14572 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4001, 4022, and 4044

RIN 1212–AA98

Bankruptcy Filing Date Treated as Plan Termination Date for Certain Purposes; Guaranteed Benefits; Allocation of Plan Assets; Pension Protection Act of 2006

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule implements section 404 of the Pension Protection Act of 2006. Section 404 amended Title IV of ERISA to provide that when an underfunded, PBGC-covered, single-employer pension plan terminates while its contributing sponsor is in bankruptcy, sections 4022 and 4044(a)(3) of ERISA are applied by treating the date the sponsor's bankruptcy petition was filed as the termination date of the plan. Section 4022 determines which benefits are guaranteed by PBGC, and section 4044(a)(3) determines which benefits are entitled to priority in ''priority category 3'' in the statutory hierarchy for allocating the assets of a terminated plan. Thus, under the 2006 amendments, when a plan terminates while the sponsor is in bankruptcy, the amount of benefits guaranteed by PBGC and the amount of benefits in priority category 3 are fixed at the date of the bankruptcy filing rather than at the plan termination date. In most cases, this reduces the amount of guaranteed benefits and the amount of benefits in priority category 3.

DATES: Effective July 14, 2011. See Applicability in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: John H. Hanley, Director, or Gail Sevin, Manager, Legislative and Regulatory Department; or James J. Armbruster, Assistant Chief Counsel, Office of Chief Counsel; 1200 K Street, NW., Washington, DC 20005–4026. Mr. Hanley and Ms. Sevin may be reached at 202–326–4024; Mr. Armbruster at 202–326–4020, extension 3068. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024 or 202–326–4020.)

SUPPLEMENTARY INFORMATION:

Background

The Pension Benefit Guaranty Corporation (''PBGC'') administers the single-employer pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (''ERISA''). The program covers private-sector, single-employer defined benefit plans, for which premiums are paid to PBGC each year. Covered plans that are underfunded may terminate either in a distress termination under section 4041(c) of ERISA or in an involuntary termination (one initiated by PBGC) under section 4042 of ERISA. When such a plan terminates, PBGC typically is appointed statutory trustee of the plan, and becomes responsible for paying benefits in accordance with the provisions of Title IV.

The amount of benefits paid by PBGC under a terminated, trusteed plan is determined by several factors. The starting point is the plan itself: PBGC pays only those benefits that were provided under the plan and that have been earned by the participant under the plan's terms.

But PBGC does not guarantee all benefits earned under a terminated plan. There are statutory and regulatory limits on PBGC's guarantee, which are discussed below. On the other hand, a participant may sometimes receive from PBGC more than his guaranteed benefits, if either the allocation under section 4044 of ERISA of the plan's assets or the allocation under section

4022(c) of PBGC's recoveries, or both, results in additional benefits being payable.

When a plan terminates, a termination date must be established in accordance with section 4048 of ERISA. If the plan is underfunded and terminates in a distress or involuntary termination, the termination date is the date agreed upon by the plan administrator and PBGC or, if they do not agree, the date set by a United States district court.

The termination date is a critical date for many purposes under Title IV of ERISA. For example, it is the date as of which a plan sponsor's liability to the PBGC for a terminated plan's unfunded benefit liabilities is determined under section 4062(b) of ERISA. Most relevant to this final regulation, the termination date—under prior law—was the date that governed the amount of benefits participants in the terminated plan would receive. The amount of benefits guaranteed by PBGC under section 4022 of ERISA and the amount of any additional benefits payable from the plan's assets under section 4044 or from PBGC's recoveries under section 4022(c) were all determined as of the termination date.

Many single-employer pension plans that terminate in a distress or involuntary termination do so while the plan sponsor is in bankruptcy. Indeed, two of the criteria for a distress termination are based on the sponsor's liquidating or reorganizing in bankruptcy. *See* ERISA section 4041(c)(2)(B)(i), (ii).

A persistent problem for the PBGC insurance program has been that the funded status of plans often deteriorates significantly while the plan sponsor is in bankruptcy. Many sponsors have failed to make minimum funding contributions to their plans during the bankruptcy, while the plan continues to pay retiree benefits as usual and employees continue to earn additional benefits. Because the termination date often comes after the sponsor has been in bankruptcy for some time, the result has been that PBGC's losses often increase substantially during the course of a bankruptcy proceeding.

Congress sought to address this problem in the Pension Protection Act of 2006 (''PPA 2006''), which was signed into law on August 17, 2006. Section 404 of PPA 2006 provides generally that, if a PBGC-insured plan terminates while its contributing sponsor is in bankruptcy, PBGC's guarantees and the amount of benefits entitled to priority in ''priority category 3'' in the ERISA section 4044 allocation of the plan's assets are determined as of the date that the sponsor's bankruptcy petition was filed (the ''bankruptcy filing date'') rather than as of the termination date. This means, for example, that benefits earned by participants after the bankruptcy filing date are not guaranteed. The changes generally reduce the amount of benefits guaranteed by PBGC and the amount of benefits receiving priority treatment in the section 4044 asset allocation. By protecting PBGC from growth in its liabilities during bankruptcy proceedings, these changes reduce claims on PBGC's funds and thereby strengthen the PBGC insurance program. The changes are described more fully below.

PPA 2006 provided that the changes made by section 404 of PPA 2006 are effective for plan terminations that occur during the bankruptcy of the plan sponsor, if the bankruptcy filing date was on or after September 16, 2006 (the date that is 30 days after PPA's enactment). The terminations to which the changes apply are referred to in this preamble and in the final regulation as ''PPA 2006 bankruptcy terminations.'' Of course, if a plan's termination date is the same as the bankruptcy filing date, then the plan is unaffected by the changes made by section 404.

On July 1, 2008 (at 73 FR 37390), PBGC published in the **Federal Register** a proposed rule to implement section 404 of PPA 2006. PBGC received comments on the proposed rule from four commenters—three labor organizations and one individual. The individual commenter opposed the proposed rule changes in their entirety on the ground that PBGC ''should not shore up its finances on the backs of workers.'' Rather, the commenter stated, Congress has a responsibility to address the solvency of the PBGC insurance program either by raising taxes or increasing PBGC premiums, or by forcing employers to fully fund their pensions. This comment should be addressed to Congress; PBGC has no authority to disregard the statutory changes made by PPA 2006. The other comments are discussed below with the topics to which they relate.

Overview of Final Rule Changes

The final regulation implements the statutory changes, described above, made by section 404 of PPA 2006.

The final regulation amends PBGC's regulations on Terminology, 29 CFR part 4001; Benefits Payable in Terminated Single-Employer Plans, 29 CFR part 4022; and Allocation of Assets in Single-Employer Plans, 29 CFR part 4044. The amendments establish rules for PPA 2006 bankruptcy terminations, the most important of which are:

- A participant's guaranteed benefit is based on the amount of his service and the amount of his compensation (if applicable) as of the bankruptcy filing date.
- The Title IV guarantee limits—the maximum guaranteeable benefit, the phase-in limit, and the accrued-at-normal limit—are all determined as of the bankruptcy filing date.
- Only benefits that are nonforfeitable as of the bankruptcy filing date are guaranteed. Thus, for example, early retirement subsidies and disability benefits to which a participant became entitled after the bankruptcy filing date are not guaranteed.
- Participants who retired under a subsidized early retirement benefit (or a disability or other benefit) to which they became entitled between the bankruptcy filing date and the termination date will continue in pay status, or may go into pay status if they are not already receiving a benefit, but the amount of the benefit is reduced to reflect that the subsidy (or other benefit) is not guaranteed.
- The benefits in priority category 3 under section 4044(a) of ERISA are benefits in pay status, or that could have been in pay status, three years before the bankruptcy filing date, generally taking into account only benefit increases that were in effect throughout the period beginning five years before the bankruptcy filing date and ending on the termination date.
- Benefits under section 4022(c) of ERISA are based on (among other things) the value of a plan's unfunded nonguaranteed benefits. Because section 404 of PPA 2006 has changed guaranteed benefits and benefits in priority category 3, the unfunded nonguaranteed benefits are changed and therefore the section 4022(c) benefits are also changed.
- Where a plan has more than one contributing sponsor and all contributing sponsors did not file for bankruptcy on the same date, PBGC determines the date to treat as the bankruptcy filing date, based on the facts and circumstances.

Although the bankruptcy filing date thus displaces a plan's termination date as the controlling date for certain purposes, the termination date continues to be important for other purposes. For example, although the monthly amount of benefits guaranteed and the monthly amount of benefits in priority category 3 will be determined by reference to the bankruptcy filing date, the value of those benefits is determined—as before PPA 2006—as of the plan's termination date. The value of a terminated plan's assets, too, is

determined as of the termination date. Also, determinations under sections 4062(a) and (b) of ERISA of the parties liable for a plan's unfunded benefit liabilities and the amount of those liabilities are made as of the termination date.

The final regulation is nearly the same as the proposed regulation, with only a few minor differences. Those differences are discussed below with the topics to which they relate. And, like the proposed regulation, the final regulation makes some minor changes unrelated to PPA 2006.

A detailed discussion of the final regulation follows.

Guaranteed Benefits

Prior Law

PBGC's guarantee is limited, under section 4022(a) of ERISA, to nonforfeitable benefits under a terminated plan. Before PPA 2006, the crucial date for determining guaranteed benefits was the plan's termination date, established under section 4048 of ERISA. PBGC had to determine the amount of benefits participants had earned under the plan, and whether those benefits were nonforfeitable, as of the termination date.

In addition, PBGC's guarantee is subject to two important limitations under section 4022(b) of ERISA: The maximum guaranteeable benefit (sometimes referred to as the maximum guarantee limit or the maximum insurance limit) under section 4022(b)(3), and the phase-in limit under sections 4022(b)(1) and 4022(b)(7). The maximum guaranteeable benefit essentially places a ceiling, or cap, on the amount of a participant's guaranteed benefit. The maximum monthly guaranteeable benefit under section 4022(b)(3)(B) was $750 per month for a 65-year-old participant receiving a straight-life annuity in a plan that terminated in 1974. (The maximum guaranteeable benefit may be lower, under section 4022(b)(3)(A), depending on the participant's average monthly gross income, but this limitation rarely applies, and the discussion and examples in this regulation assume that it does not apply.) The $750 monthly figure is adjusted each year based on the contribution and wage base under the Social Security Act; for example, for a plan whose termination date was in 2005 the maximum monthly amount at age 65 payable as a straight-life annuity was $3,801.14. The maximum guaranteeable benefit for an individual participant depends on his age at the later of the plan's termination date or the date he begins receiving his benefit from PBGC, and on the form in which the benefit is paid. For example, the maximum guaranteeable benefit is lower if the participant begins receiving benefits from PBGC before age 65, or if the benefit form will provide a survivor benefit after the participant dies.

The phase-in limit under sections 4022(b)(1) and 4022(b)(7) of ERISA provides that PBGC's guarantee of a benefit increase resulting from amendment of an existing plan or adoption of a new plan is phased in over a five-year period. PBGC's guarantee is equal to the number of full years before the termination date that the increase was in effect multiplied by the greater of (i) 20% of the monthly increase or (ii) $20 per month (but the guarantee is never more than the amount of the increase). For example, PBGC would guarantee $50 of a $125 monthly benefit increase that was in effect more than two years but less than three years before the termination date (40% of $125 = $50, which is greater than $40). A benefit increase is considered to be in effect beginning on the later of its adoption date or its effective date.

There is a third limitation on PBGC's guarantee that the agency adopted when it issued its initial guaranteed-benefits regulation. (40 Fed. Reg. 43509, Sept. 22, 1975.) Under § 4022.21 of PBGC's regulation, PBGC's guarantee is generally limited to the amount of the participant's benefit payable as a straight-life annuity commencing at normal retirement age. The effect of this provision, often referred to as the ''accrued-at-normal'' limit, is that PBGC generally does not guarantee temporary supplemental benefits payable to a participant who retires before normal retirement age. Consider, for example, a participant who was entitled under his plan to receive $1,000 per month as a straight-life annuity starting at his normal retirement date but who could retire early under certain conditions with an unreduced benefit of $1,000 plus a supplement of $400 per month payable until age 62. If the participant retires early, PBGC generally will not guarantee more than $1,000 per month.

Before PPA 2006, the maximum guaranteeable benefit, the phase-in limit, and the accrued-at-normal limit were all calculated as of the termination date of a plan. Accordingly, before PPA 2006, a participant's guaranteed benefit would be the amount of the nonforfeitable plan benefit to which the participant was entitled as of the termination date, subject to the guarantee limits applicable as of that date.

PPA 2006 Changes

Section 404 of PPA 2006 changed the way in which the amount of guaranteed benefits is determined in PPA 2006 bankruptcy terminations. Section 404(a) of PPA 2006 added a new subsection (g) to section 4022 of ERISA. New section 4022(g) provides as follows:

> *Bankruptcy Filing Substituted for Termination Date.*—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan, then this section shall be applied by treating the date such petition was filed as the termination date of the plan.

The ''section'' referred to is section 4022 of ERISA, which as explained above determines the amount of a participant's guaranteed benefit. Thus, for a plan that terminates while its contributing sponsor is in bankruptcy, section 4022(g) requires that a participant's guaranteed benefit be determined by treating the date the sponsor's bankruptcy petition was filed (the ''bankruptcy filing date'') as if it were the termination date of the plan.

This change has a number of important consequences. First, it means that a participant's guaranteed benefit can be no greater than the amount of his plan benefit as of the bankruptcy filing date. Even though the plan in many cases will have continued after the bankruptcy filing date and (in the absence of a plan freeze) participants will have continued to accrue benefits after that date, those post-bankruptcy accruals are not guaranteed. Thus, under the change, a participant's guaranteed benefit is calculated by reference to the amount of his service and the amount of his compensation (or the amount of the plan's benefit ''multiplier,'' depending on how the plan calculates benefits) as of the bankruptcy filing date.

Second, only benefits that were nonforfeitable as of the bankruptcy filing date are guaranteed. For example, in a plan that has five-year ''cliff'' vesting, a participant with less than five years of service as of the bankruptcy filing date has no guaranteed benefit, even if his benefit becomes vested by the section 4048 termination date. Similarly, if a participant becomes entitled to a disability retirement benefit or an early retirement subsidy after the bankruptcy filing date but before the termination date, that disability benefit or subsidy is not guaranteed.

One commenter suggested that PBGC should not apply the rule described in

the previous paragraph to participants who become disabled after the bankruptcy filing date but before the termination date. The commenter noted that the effects could be especially harsh in the case of disability, and that a different rule ought to apply because becoming disabled is not a choice over which a participant has control and is subject to verification. PBGC has not adopted this suggestion. Under ERISA and PBGC's rules, disability retirement benefits are treated the same as other benefits in determining nonforfeitability: They are nonforfeitable (and thus guaranteed) only if the condition for entitlement, such as the disabling event, occurred on or before the termination date. PPA 2006 changed the date for determining entitlement to a guaranteed benefit from the termination date to the bankruptcy filing date, but did not otherwise change the guarantee rules. Thus, PBGC believes it would not be appropriate to make the suggested change.

Third, the PBGC guarantee limits—the maximum guaranteeable benefit, the phase-in limit, and the accrued-at-normal limit—will all be determined as of the bankruptcy filing date (subject to the refinement described below). For example, if the sponsor's bankruptcy filing date is in 2008 and the plan's termination date is in 2010, the maximum guaranteeable benefit for all plan participants will be based on the 2008 limit. Also, an individual participant's maximum guaranteeable benefit will be based on his age and form of benefit as of the later of the bankruptcy filing date or the date he begins to receive his benefit. Similarly, the phase-in rule will be applied by counting the number of full years before the bankruptcy filing date that a benefit increase has been in effect. The accrued-at-normal limit, too, will be determined based on the facts as of the bankruptcy filing date.

The final rule modifies PBGC's regulations to reflect the changes described above for PPA 2006 bankruptcy terminations. In most cases, the final regulation (like the proposed regulation) simply provides that in a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in a specified section or paragraph of the regulation. The final regulation provides a number of examples to clarify what this means in various situations. In response to a comment, the final regulation provides a second example (in addition to the one in the proposed rule) to illustrate the workings of the accrued-at-normal limit. Except for a few minor items discussed below, the regulations are unchanged for plans to which the PPA 2006 amendments do not apply (''non-PPA 2006 bankruptcy termination''; the final rule adds this term to the definitions in § 4001.2).

The final regulation contains one refinement that was not addressed in the proposed regulation. The proposed regulation provided that PBGC would determine the guarantee limits based on the age of the participant and the form of benefit that was being paid at the later of the bankruptcy filing date and the date the participant begins to receive his benefit from PBGC. The final regulation adopts this rule, but with a slight modification that applies primarily in cases in which there has been a death before termination that affects the form of benefit being paid at termination. PBGC has decided that the guarantee limits should be applied based on the *form* of benefit that was being paid (or was payable) and the *person* who was receiving or was entitled to receive a benefit from PBGC as of the termination date, not the bankruptcy filing date. For example, if as of the bankruptcy filing date a participant was receiving a benefit in the form of a joint-and-survivor annuity, but by the termination date the participant has died and his spouse is receiving a survivor annuity, PBGC will determine the maximum guaranteeable benefit for the surviving spouse based on the spouse's age as of the bankruptcy filing date but based on the straight-life benefit form being paid to the spouse at the termination date rather than on the joint-and-survivor benefit form that was being paid as of the bankruptcy filing date. Similarly, if the benefit in pay status as of the bankruptcy filing date was a ''pop up'' annuity (a joint-and-survivor annuity under which the benefit amount ''pops up'' to the straight-life amount if the beneficiary dies before the participant) and the beneficiary dies before the termination date, PBGC will determine the maximum guaranteeable benefit based on the participant's age as of the bankruptcy filing date but based on the straight-life benefit form being paid to the participant at the termination date rather than on the joint-and-survivor ''pop up'' form that was being paid as of the bankruptcy filing date.

The final rule adopts this refinement, which will generally increase guaranteed benefits for the affected individuals, to reduce the complexity and difficulty of computing benefits. When a plan terminates, the plan records often do not reflect the full history of a specific benefit. For example, the records may show only that an individual is receiving so many dollars per month at termination and that no survivor benefit is payable; they may not show whether the person receiving that benefit is the original plan participant or a beneficiary. An additional example has been added to § 4022.23(g) to illustrate this principle.

Aggregate Limit on Benefits Guaranteed

Title IV of ERISA includes an additional limitation on PBGC's guarantee that applies only when a participant receives benefits under two or more trusteed plans. Section 4022B of ERISA provides that, in such a situation, the sum of the guaranteed benefits payable from PBGC funds with respect to all such plans may not exceed the maximum guaranteeable benefit payable ''as of the date of the last plan termination.''

PPA 2006 made no change to this provision. PBGC therefore is making no change to part 4022B of its regulations, and will continue to calculate the aggregate limit by reference to a participant's maximum guaranteeable benefit as of the section 4048 termination date of the latest-terminating plan.

Benefits Payable Under the Section 4044 Allocation

Prior Law

PPA 2006 also made an important change to the allocation of a terminated plan's assets under section 4044 of ERISA. To understand this change, it is important to understand how the section 4044 allocation worked before the PPA 2006 amendment.

As noted above, a participant may receive more than his guaranteed benefit from PBGC, depending on the amount of the plan's assets and whether his benefits are entitled to priority under ERISA's allocation scheme. Section 4044 of ERISA specifies how a plan's assets are to be allocated among various classes of guaranteed and nonguaranteed benefits of participants. Part 4044 of PBGC's existing regulations provides detail about how assets and benefits are valued, and how the assets are allocated to the benefits. (Section 4022(c) of ERISA may provide additional benefits, as discussed below.)

The first step in the section 4044 allocation is to assign each participant's plan benefits to one or more of six ''priority categories'' that are described in paragraphs (1) through (6) of section 4044(a) of ERISA. Before PPA 2006, the benefits in each priority category were as follows:

Priority category 1: The portion of a participant's accrued benefit derived

from the participant's voluntary contributions.

Priority category 2: The portion of a participant's accrued benefit derived from the participant's mandatory contributions.

Priority category 3: The portion of a participant's benefit that was in pay status as of the beginning of the three-year period ending on the termination date of the plan, or that would have been in pay status at the beginning of such three-year period if the participant had retired before the beginning of the three-year period and had commenced receiving benefits (in the normal form of annuity under the plan) as of the beginning of such period. In either case, however, the benefits in this category are limited to the lowest annuity benefit payable under the plan provisions at any time during the five-year period ending on the termination date (*e.g.,* disregarding benefit increases in the five-year period).

Priority category 4: All other guaranteed benefits, and benefits that would be guaranteed but for the aggregate limit of section 4022B of ERISA and the stricter phase-in limit that applies to business owners.

Priority category 5: All other nonforfeitable benefits under the plan.

Priority category 6: All other benefits under the plan.

PBGC's regulations make a distinction between a participant's ''gross'' benefit in a priority category and his ''net'' benefit in that category (although the regulations do not use these terms). The gross benefit is the total amount of the participant's benefit that would be in a priority category, if benefits in higher priority (*i.e.,* lower numbered) categories were not subtracted. The net benefit is the amount in the priority category after subtracting amounts in higher priority categories. For example, a participant's net benefit in priority category 4 generally excludes any portion of his guaranteed benefit that was allocated to priority categories 2 or 3. *See* 29 CFR 4044.10(c). Descriptions of benefits in a priority category usually refer to the net benefits in that category, and the discussion below generally follows that usage, unless otherwise indicated.

Once the benefits of each participant have been assigned to the applicable priority category or categories, the benefits of all participants are valued, using the rules in PBGC's valuation regulation, 29 CFR part 4044, subpart B. The terminated plan's assets are also valued (at fair market value). The valuation of both the plan benefits and the plan assets is done as of the termination date.

After the plan benefits and assets are valued, the assets are ''poured through'' the priority categories, beginning with priority category 1. If the assets are sufficient to pay all benefits in priority category 1, then they pour into priority category 2, and so on until either all benefits in all categories have been covered or until the assets are insufficient to pay all benefits within a category. Where assets are insufficient to pay all benefits within a category, they are allocated among the benefits in that category according to the rules in part 4044 of PBGC's regulations.

It is important to note that benefits in priority category 3—which may or may not be guaranteed—come ahead of guaranteed benefits in priority category 4 in the section 4044 asset allocation. Thus, for example, if a terminated plan's assets are sufficient to cover all benefits in priority category 3, those benefits will be paid, regardless of whether they are guaranteed.

PPA 2006 Changes

Section 404 of PPA 2006 made an important change to priority category 3 in the asset allocation, similar to the change to guaranteed benefits. Section 404(b) added a new subsection (e) to section 4044, which provides as follows:

> *Bankruptcy Filing Substituted for Termination Date.*—If a contributing sponsor of a plan has filed or has had filed against such person a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan, then subsection (a)(3) shall be applied by treating the date such petition was filed as the termination date of the plan.

Subsection (a)(3) of section 4044 describes the benefits assigned to priority category 3. As explained above, before PPA 2006 the benefits in priority category 3 were the benefits that were in pay status as of the beginning of the three-year period ending on the termination date, or that would have been in pay status as of that date if the participant had retired—but based on the plan provisions during the five years before the termination date under which the benefit would be the least. *See* 29 CFR 4044.13. In the proposed rule, PBGC stated that it interpreted new section 4044(e) to mean that these three-year and five-year periods are the three-year and five-year periods before the bankruptcy filing date rather than before the termination date. The proposed rule stated that the benefits in priority category 3 will be benefits in pay status, or that could have been in pay status, three years before the bankruptcy filing date, but generally taking into account only benefit increases that were effective throughout the five-year period ending on the bankruptcy filing date. (The proposed rule also stated that the exception in § 4044.13(b)(5) for certain ''automatic'' benefit increases would apply to applicable benefit increases in the fourth and fifth years preceding the bankruptcy filing date.)

The final rule adopts these proposals, but with a slight modification that will apply only in limited circumstances. The three-year period, as under the proposed rule, is the three-year period before the bankruptcy filing date. But for the five-year period, PBGC realized that it would not be appropriate to simply substitute the bankruptcy filing date for the termination date. Although that formulation would present no problems in the case of a benefit that *increased* during the years before a bankruptcy filing, it could have anomalous results in the case of a benefit that *decreased* between the bankruptcy filing date and the termination date. (A benefit might decrease, for example, due to the expiration of a temporary supplement or a plan amendment eliminating an ancillary benefit that is not protected by section 411(d)(6) of the Internal Revenue Code.) Not taking account of such a decrease could mean that a participant's priority category 3 benefit would be larger than the participant's total benefit as of the termination date. It makes no sense to provide priority treatment for an amount larger than the amount of the participant's entire benefit as of termination.

To address that anomaly, the final rule creates a new term in § 4044.13(c)(1)—the ''applicable pre-termination period''—to describe the period that includes the five years before the bankruptcy filing date plus the additional time between the bankruptcy filing date and the termination date. The final rule provides that the benefit in priority category 3 is limited to the lowest annuity benefit payable under the plan provisions at any time during the applicable pre-termination period.

In addition, the changes made by PPA 2006 section 404(a) to the way guaranteed benefits are determined necessarily affect the gross benefits that are assigned to priority category 4. As explained above, the gross benefits assigned to priority category 4 are guaranteed benefits (and benefits that would be guaranteed but for the aggregate limit of section 4022B and the stricter phase-in limit that applies to business owners). Because section 404(a) of PPA 2006 has modified

PBGC's guarantee, the gross benefits assigned to priority category 4 in a PPA 2006 bankruptcy termination are those benefits guaranteed under new section 4022(g), not the benefits that would be guaranteed absent that provision. In other words, the guaranteed benefits in priority category 4 will be the plan benefits that were both accrued and nonforfeitable as of the bankruptcy filing date, based on the guarantee limits as of that date. In addition, the PPA 2006 changes to benefits in priority category 3 necessarily affect the net benefits in priority category 4 as well; some guaranteed benefits that previously would have been in priority category 3 will now fall into priority category 4. The final rule reflects this treatment.

PPA 2006 did not amend the other priority categories of section 4044. Therefore, the gross amount of a participant's benefit in those categories will be unaffected by the changes discussed above. For example, the gross amount of a participant's benefit in priority category 5 is all of the participant's benefit that is nonforfeitable as of the plan's termination date. *See* ERISA section 4044(a)(5); 29 CFR 4044.15. Thus, a benefit that is not guaranteed because it was forfeitable as of the bankruptcy filing date will be treated as nonforfeitable for purposes of priority category 5 if the participant satisfied the conditions for entitlement to the benefit between the bankruptcy filing date and the plan's termination date.

The net amount of a participant's benefit in priority category 5, however, is necessarily affected by the changes to the benefits in priority categories 3 and 4. For example, benefits that are not guaranteed because they became nonforfeitable between the sponsor's bankruptcy filing date and the plan's termination date will not be in priority category 4 but will be in priority category 5. Thus, a participant in that situation will have a smaller guaranteed benefit in priority category 4 and therefore a larger net benefit in priority category 5. (Benefits in priority category 5 are divided into subcategories, based on whether they would have been payable based on the plan provisions in effect five years before the plan's termination date, or became payable due to subsequent plan amendments. *See* ERISA section 4044(b)(4) (before PPA 2006, section 4044(b)(3)); 29 CFR 4044.10(e). Because PPA 2006 did not amend this provision, PBGC interprets the five-year period in section 4044(b)(4) of ERISA—and in § 4044.10(e) of PBGC's regulation—as still being the five-year period before the termination date. No change in the regulation is needed to embody this interpretation.)

Like the changes to the guarantee provisions, the PPA 2006 changes to the ERISA section 4044 asset allocation apply to PPA 2006 bankruptcy terminations—plan terminations occurring during a bankruptcy proceeding initiated on or after September 16, 2006.

The PPA 2006 changes, as explained above, require PBGC to determine the *amount* of a participant's monthly benefit in priority category 3 and priority category 4 by reference to the bankruptcy filing date rather than the termination date. *Valuing* benefits in the priority categories is a different matter. PBGC has always valued benefits and plan assets as of the plan's termination date, and section 4044(e) does not dictate a change to that approach for priority category 3. Although section 4044(e) might be read to suggest that a valuation should be done as of the bankruptcy filing date for purposes of priority category 3, PBGC believes that the better interpretation is that the valuation should still be done as of the termination date. Subsection (a)(3) of section 4044, which is to be ''applied'' by treating the bankruptcy filing date as the termination date, describes only the kind of benefits that fall into priority category 3, not the time or manner of valuing those benefits or plan assets.

Moreover, because section 4044(e) applies only to priority category 3, benefits and plan assets will still be valued as of the termination date for all other categories. Using a different valuation date for priority category 3 than for all the other priority categories would be complex to administer, difficult to explain to participants, and anomalous in its results. In the absence of a clear statutory mandate of that intricate approach, PBGC is taking the simpler and more coherent approach of valuing benefits and assets as of the termination date for all priority categories.

Accordingly, PBGC is making no change to PBGC's existing rules in this regard. Under § 4044.10(c), benefits in a trusteed plan will still be valued as of the termination date. The tables in Appendix D to part 4044 used to determine a participant's expected retirement age are also unchanged, and continue to be based on the year in which the plan's termination date occurs. (PBGC's determination of a participant's expected retirement age may be affected by the new PPA 2006 rules, however, because, as explained above, those rules may change the amount of a participant's guaranteed benefit, and a change in the guaranteed benefit in some cases affects the expected retirement age.) A terminated plan's assets, too, will still be valued as of the termination date under § 4044.3(b).

Benefits Payable Under Section 4022(c) of ERISA

Prior Law

Under section 4022(c) of ERISA, PBGC pays additional benefits to participants and beneficiaries, beyond guaranteed benefits and benefits provided by the plan's assets. The amount of section 4022(c) benefits depends on PBGC's recoveries of unfunded benefit liabilities under section 4062 (or, in some circumstances, under sections 4063 or 4064). Sections 4062(a) and (b) of ERISA provide that, when a plan terminates in a distress termination or an involuntary termination, the contributing sponsor of the plan and all members of the contributing sponsor's controlled group are liable to PBGC for the ''total amount of the unfunded benefit liabilities (as of the termination date) to all participants and beneficiaries under the plan.'' The amount of unfunded benefit liabilities, defined in section 4001(a)(18) of ERISA, is the excess of the value of the plan's benefit liabilities over the value of the plan's assets—*i.e.,* the amount of the shortfall in the plan's assets.

PBGC seeks to recover from contributing sponsors and members of their controlled groups as much as it can of terminated plans' unfunded benefit liabilities. A portion of those recoveries is paid to participants and beneficiaries of a terminated plan in accordance with the provisions of section 4022(c) of ERISA. Section 4022(c) provides for determination of a ''recovery ratio,'' which is then multiplied by the total value of the plan's unfunded nonguaranteed benefits to determine the total amount allocable to participants in the plan who have unfunded nonguaranteed benefits. It is allocated to those unfunded nonguaranteed benefits beginning in the section 4044 priority category where the plan's assets ran out, but none of it is allocated to guaranteed benefits—*i.e.,* this section 4022(c) allocation ''skips over'' guaranteed benefits in the priority categories.

The recovery ratio is described in section 4022(c)(3) of ERISA. For a large plan, it equals the value of PBGC's recovery of unfunded liabilities for that plan divided by the amount of that plan's unfunded benefit liabilities ''as of the termination date.'' For a small plan, the ratio is based on an average of

PBGC's recoveries over a five-year period. For this purpose, a small plan is any plan in which the value of unfunded nonguaranteed benefits is equal to or less than $20 million. (Section 408 of PPA 2006 changed the five-year period over which the recovery ratio is determined for small plans; that change generally applies to plans in which termination was initiated on or after September 16, 2006.)

A plan's unfunded nonguaranteed benefits, as the term suggests, are those benefits that are neither funded by the plan's assets under the section 4044 allocation nor guaranteed by PBGC. (PBGC generally uses the term ''unfunded nonguaranteed benefits,'' because that term is more descriptive than ''outstanding amount of benefit liabilities,'' the term used in section 4001(a)(19) of ERISA.) Stated differently, the unfunded nonguaranteed benefits are the benefits lost by participants on account of their plan's termination, a portion of which is made up by the section 4022(c) allocation.

PPA 2006 Changes

New section 4022(g) instructs PBGC to apply section 4022 by treating the bankruptcy filing date as the plan's termination date. Section 4022(c), of course, is part of section 4022. PBGC interprets this statutory language, for section 4022(c) benefits, to mean that in determining a plan's unfunded nonguaranteed benefits, PBGC must take into account the changes to guaranteed benefits under new section 4022(g) and the changes to the asset allocation under new section 4044(e). For example, a benefit that became nonforfeitable between the bankruptcy filing date and the termination date is not guaranteed and thus (if not funded) is included in the unfunded nonguaranteed benefits.

The final regulation also provides that, as in a non-PPA 2006 bankruptcy termination, PBGC will value the unfunded nonguaranteed benefits as of the termination date. For reasons similar to those explained above regarding priority category 3 benefits, PBGC believes that the statutory provision should not be interpreted to require a different valuation date for this purpose.

The final regulation similarly provides that the other elements that go into calculation of section 4022(c) benefits are unaffected by the PPA 2006 changes. The recovery ratio described in section 4022(c)(3)(A), as explained above, is based on PBGC's recoveries of unfunded benefit liabilities. Because that section provides that the denominator of the recovery ratio is the amount of the plan's unfunded benefit liabilities as of the termination date, one might conclude that in a PPA 2006 bankruptcy termination the unfunded benefit liabilities should be determined for this purpose as of the bankruptcy filing date. The final regulation does not adopt that approach. The numerator of the recovery ratio—PBGC's recoveries—is based on PBGC's statutory claim for unfunded benefit liabilities, which, under section 4062(b) of ERISA, must be determined as of the termination date. Because section 4062(b) was not amended by PPA 2006, PBGC's recoveries will still be based on that termination-date-computed claim. PBGC believes that the general language of section 4022(g) should not be interpreted to require a separate determination of unfunded benefit liabilities to be made as of the bankruptcy filing date, when PBGC recoveries will be based on a determination of unfunded benefit liabilities as of the termination date. Thus, the amount of a plan's unfunded benefit liabilities, as in a non-PPA 2006 bankruptcy termination, will be determined based on the value of the plan's assets and benefit liabilities as of the termination date. *See* ERISA sections 4001(a)(18), 4062(b).

The final rule adds a new § 4022.51 to PBGC's regulations to incorporate the above interpretations. It provides, for example, that in computing section 4022(c) benefits in a PPA 2006 bankruptcy termination, the benefits included in a plan's unfunded nonguaranteed benefits take into account the provisions of sections 4022(g) and 4044(e) of ERISA, and the corresponding provisions of PBGC's regulations. The value of unfunded nonguaranteed benefits will be multiplied by the recovery ratio, as in a non-PPA 2006 bankruptcy termination, to determine the total dollar amount to be allocated for the plan. That dollar amount will be allocated to the unfunded nonguaranteed benefits of participants in the same manner as before PPA 2006, but the result of the allocation will be different because of the changes made by section 404 of PPA 2006 to guaranteed benefits and the benefits in priority category 3. For example, a benefit that would have been guaranteed under prior law but is not guaranteed under PPA 2006 and is not funded under the section 4044 allocation is an unfunded nonguaranteed benefit that might be paid under the section 4022(c) allocation.

Other Issues

Reduction of Benefits to Title IV Levels

In a distress termination, the plan administrator is required, beginning on the proposed termination date, to reduce benefits in pay status to the estimated levels payable under Title IV. *See* ERISA section 4041(c)(3)(D)(ii); 29 CFR §§ 4041.42(c), 4022.61–4022.63. The final regulation provides that for any PPA 2006 bankruptcy termination, those estimated benefits are based on the rules described above relating to the bankruptcy filing date.

PPA 2006 did not change the provision in section 4041 of ERISA about *when* these benefit reductions are to be made. Accordingly, the final regulation does not change the rule in § 4041.42(c) of the regulations that the reductions are made beginning on the proposed termination date.

Recoupment of Overpayments

PBGC's current regulations provide that the agency recoups benefit overpayments if it determines that net benefits paid exceed the amount to which a participant is entitled under Title IV of ERISA. *See* 29 CFR 4022.81. For example, if a retiree is paid an estimated termination benefit of $3,100 per month while PBGC is processing the termination of the plan, and PBGC later determines that the participant is entitled to a termination benefit of only $3,000 per month, the agency generally recoups the net overpayment (the $100 difference times the number of months the benefit was overpaid) from future benefit payments. The amount recouped is determined by multiplying future benefit payments by a fraction the numerator of which is the net overpayment and the denominator of which is the present value of the benefit to which the participant is entitled under Title IV. The final rule (like the proposed rule) amends § 4022.82(a) to provide that the denominator is determined taking into account the changes to participants' benefits made by section 404 of PPA 2006.

In computing the net overpayment, the current regulation provides that PBGC takes into account only overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA. *See* 29 CFR 4022.81(c)(1). Thus, for example, in a case where a plan is terminated under section 4042 and the termination date is before the date on which PBGC initiated termination proceedings, PBGC does not

recoup overpayments made before initiation of the termination proceedings even though those overpayments were made after (what later became) the termination date.

In the preamble to the proposed rule, PBGC proposed not to make any change to this rule. As under prior law, the preamble stated, in determining the amount to be recouped (or otherwise recovered, if there are no future benefits from which to recoup), PBGC would include only overpayments made on or after the latest of the proposed termination date, the termination date, or, if no notice of intent to terminate was issued, the date on which proceedings to terminate the plan are instituted pursuant to section 4042 of ERISA. Several commenters applauded this aspect of the proposed rule. They stated that this was a fair proposal that would moderate the hardship that would otherwise result if PBGC were to treat as overpayments subject to recoupment benefit payments made after the bankruptcy filing date that exceeded the Title IV limitations. These commenters asked only that PBGC make this treatment explicit in the regulation itself. To avoid any doubt about this matter, PBGC has accepted this suggestion. PBGC has thus included a new § 4022.81(c)(3) in the regulation explicitly stating that the rules regarding the overpayments and underpayments that will be taken into account in determining any amount to be recouped or reimbursed by PBGC apply regardless of whether the termination is a PPA 2006 bankruptcy termination.

Continuation of Payments; Entry Into Pay Status

As explained above, under new section 4022(g) of ERISA, PBGC will not guarantee a benefit that was forfeitable as of the bankruptcy filing date even if it became nonforfeitable by the termination date. This includes, for example, a subsidized early retirement benefit or disability benefit to which a participant became entitled between the two dates.

Because the plan normally will have been ongoing as of the bankruptcy filing date, participants who became entitled to subsidized early retirement benefits or other benefits after the bankruptcy filing date but before the termination date may have retired and been put into pay status by the plan administrator. It would impose a hardship on such participants to take them out of pay status, likely depriving them of all or most of their retirement income.

To address this situation, the proposed regulation proposed that participants who became entitled under their plan to subsidized early retirement benefits or other benefits between the bankruptcy filing date and the termination date would be continued in pay status or, if they were not already receiving a benefit, would be allowed to go into pay status. The *amount* of such a benefit, however, would be reduced to reflect that the subsidy or other benefit is not guaranteed.

PBGC received several comments on this proposal. One commenter suggested that PBGC should give a choice to participants who became entitled to a subsidized early retirement or other benefit between the bankruptcy filing date and the termination date and went into pay status with that benefit. The choice would be either to remain in pay status but with the benefit reduced to reflect that the subsidy or other benefit is not guaranteed, or to come out of pay status with the ability to resume benefit payments at a later date.

The final rule does not adopt this suggestion. In the situations in question, the participant was entitled under the plan to the subsidized or other benefit at the time he was put into pay status and the benefit was nonforfeitable as of the termination date. Even though the benefit is not guaranteed because of section 4022(g), some or all of it may be paid by PBGC in priority category 5, depending on the level of the plan's assets and PBGC's recoveries on its claims for unfunded benefit liabilities under section 4062(b) of ERISA. Moreover, the Title IV limits on PBGC's guarantee have often resulted in substantial reductions to retirees' benefits, but PBGC historically has not offered a choice to such retirees to come out of pay status and resume benefits later.[1] If PBGC were to allow such a choice in the situations addressed in this regulation, it might seem unfair not to allow a similar choice to any retiree whose benefit is reduced because of Title IV limits. But allowing a potentially large number of participants to come out of pay status and resume benefits later would create complications, including how to account for the benefits previously received and possible disputes about entitlement if, for example, the participant in the interim has divorced and remarried or a spouse has died. For these reasons, PBGC does not believe it would be appropriate to offer a choice to come out of pay status in these situations.

A commenter also suggested that PBGC specify in the regulations how it will determine the amount of the reduction in the benefit in these situations. The final rule does not adopt this suggestion. There are quite a number of different situations that may arise, and different rules may be needed for each. For example, in one case a participant who is not entitled to a fully subsidized early retirement benefit because he had not satisfied the conditions for it by the bankruptcy filing date may not be entitled to any other early retirement benefit. In that case a full actuarial reduction from the accrued benefit would be appropriate. In another case, although a participant might not be entitled to the fully subsidized benefit he had been receiving, he might be entitled to a different, partially subsidized benefit for which he had satisfied the conditions by the bankruptcy filing date. In that case, the reduction would not be a full actuarial reduction from the accrued benefit but rather would take into account the partially subsidized benefit to which the participant was entitled. Also, the plan may or may not have actuarial reduction factors for the participant's age (since under the plan they may not have been needed). PBGC believes that specifying reduction factors in this regulation for a wide range of theoretical scenarios would add more complexity than clarity.

Finally, a commenter noted that the proposed rule had described how PBGC will treat participants who become entitled to a benefit between the bankruptcy filing date and the termination date only in an example about subsidized early retirement benefits. Because this treatment applies to any benefit to which a participant becomes entitled between the bankruptcy filing date and the termination date, the commenter suggested that PBGC include it in a separate paragraph rather than merely as part of an example. This suggestion is a good one and has been adopted in § 4022.3(b)(2).

Sufficiency for Guaranteed Benefits

In a distress termination, the plan's enrolled actuary must certify, among other things, whether the plan is sufficient for guaranteed benefits as of the proposed termination date and as of the proposed distribution date. (*See* section 4041(c)(2)(A) of ERISA.) In making those determinations, the actuary must take into account nonguaranteed benefits to which the

[1] PBGC in the past has allowed participants the option to come out of pay status (and resume benefits later) in very limited circumstances, such as where a participant was mistakenly put into pay status by the plan administrator at a time when the participant was not entitled to any benefit under the plan. Relatively few participants have taken advantage of this option in any event, and for the reasons stated in the text PBGC is not inclined to expand the group to whom such a choice is offered.

plan's assets must be allocated under section 4044—notably, nonguaranteed benefits in priority category 3. PBGC must determine whether it agrees that the plan is sufficient for guaranteed benefits. (*See* section 4041(c)(3)(A) of ERISA.) If PBGC agrees that the plan is sufficient for guaranteed benefits, it so notifies the plan administrator and the administrator then proceeds to distribute the plan's assets and carry out the termination of the plan. (*See* section 4041(c)(3)(B)(ii) of ERISA.) One purpose of the determinations under section 4041 of the plan's sufficiency for guaranteed benefits is to avoid PBGC trusteeship of a plan that has enough assets to pay all the benefits that PBGC would pay if it took over the plan. (Any additional benefits that may be payable under section 4022(c) of ERISA are not considered for purposes of whether a plan is sufficient for guaranteed benefits.)

The final regulation provides that in a PPA 2006 bankruptcy termination, the determination of sufficiency for guaranteed benefits is made taking into account the amendments made by section 404 of PPA 2006. That is, the plan actuary and PBGC must determine sufficiency for guaranteed benefits based on whether, as of the termination date and the distribution date, the plan has sufficient assets to pay the benefits that are guaranteed as of the bankruptcy filing date and the benefits that are in priority category 3 as of three years before the bankruptcy filing date (based generally on the plan provisions as of five years before the bankruptcy filing date). It would make little sense to treat as insufficient for guaranteed benefits—and thus require PBGC to trustee—a plan that has enough assets to provide all the benefits that PBGC would pay if it became statutory trustee of the plan.

Amendment of Definition of Basic-Type Benefit

PBGC's regulations define the term ''basic-type benefit'' in § 4001.2 to mean any benefit that is guaranteed under part 4022 or that would be guaranteed if the guarantee limits in §§ 4022.22 through 4022.27 (primarily the maximum guaranteeable benefit and the phase-in limit) did not apply. A ''nonbasic-type benefit'' is any benefit provided by a plan other than a basic-type benefit. The effect of this distinction is to treat temporary supplements, which as explained above are generally not guaranteed due to the accrued-at-normal limit in § 4022.21, as nonbasic-type benefits. Nonbasic-type benefits are treated differently from basic-type benefits in the section 4044 allocation. *See, e.g.,* §§ 4044.10(c) and 4044.12.

If no change were made to the definition of basic-type benefit in a PPA 2006 bankruptcy termination, benefits that accrued, or to which a participant otherwise became entitled, between the sponsor's bankruptcy filing date and the plan's termination date would become nonbasic-type benefits (because they would not be guaranteed but not due to the limitations in §§ 4022.22 through 4022.27) and thus subject to the different treatment currently accorded temporary supplements. Such benefits would, absent this regulatory change, receive less favorable treatment in priority category 5, a technical result that PBGC believes was not intended by the statutory change. Not amending the regulation would also require PBGC to follow the more complex allocation procedures in part 4044 for nonbasic-type benefits even where a plan has no temporary supplements. Accordingly, the final regulation modifies the definition of ''basic-type benefits'' to provide that benefits not guaranteed solely because they accrued or became nonforfeitable, or the participant became entitled to them, after the bankruptcy filing date will be considered basic-type benefits. This change to the regulatory definition of basic-type benefits requires a conforming change to § 4044.14 of the regulations, to ensure that these nonguaranteed benefits are not placed in priority category 4, which (with limited exceptions for benefits of business owners and of participants in more than one terminated plan) is reserved for guaranteed benefits.

Determination of the Bankruptcy Filing Date

Section 404 of PPA 2006 requires treating the date that a contributing sponsor of a plan has filed or has had filed against it ''a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision'' as the termination date of the plan, for the purposes discussed above. The final regulation uses the term ''bankruptcy filing date'' to describe the date when a bankruptcy petition has been filed, and PBGC does not anticipate difficulty determining what that date is in most cases.

However, three situations may arise in which there could be ambiguity about the bankruptcy filing date. The first involves conversion of a bankruptcy case—for example, where a bankruptcy case began with the filing of a petition for reorganization under Chapter 11 of the Bankruptcy Code but was later converted to a liquidation case under Chapter 7. The final regulation clarifies that, in such a situation, the date of the original bankruptcy petition is the bankruptcy filing date. This is consistent with section 348 of the Bankruptcy Code, which provides that conversion of a case from one chapter to another under the Bankruptcy Code does not change the date of the filing of the petition.

The second situation involves plans that have more than one contributing sponsor. Section 404 of PPA 2006 applies where a plan terminates during the bankruptcy proceeding of ''a'' contributing sponsor of a plan. Although most terminating single-employer plans have only a single contributing sponsor, some plans have more than one contributing sponsor. The final regulation provides that if a plan with multiple contributing sponsors terminates during the sponsors' bankruptcy proceedings and if the various sponsors all filed for bankruptcy on the same date, that date is the bankruptcy filing date.

However, if the various contributing sponsors filed for bankruptcy on different dates, or if not all of them have filed for bankruptcy, it is not obvious what date should be treated as the bankruptcy filing date. PBGC believes that it would be impracticable to use more than one bankruptcy filing date in determining benefits under a single plan. But PBGC also believes that it would be unwise to attempt to establish a mechanical rule on what date to use that would apply in all cases. Thus, where a plan has more than one contributing sponsor and not all sponsors filed for bankruptcy on the same date, the proposed regulation provided that PBGC would determine the date to treat as the bankruptcy filing date for determining guaranteed benefits and benefits in priority category 3. PBGC's determination would be based on the facts and circumstances, which might include such things as the relative sizes of the various contributing sponsors, the relative amounts of their minimum required contributions to the plan, the timing of the different bankruptcies, and the expectations of participants.

One commenter suggested a change to the proposal described in the previous paragraph regarding plans that have more than one contributing sponsor that filed for bankruptcy on different dates. Noting the importance to participants of the date chosen as the bankruptcy filing date, the commenter urged that the final rule provide that PBGC either—

- Obtain a court determination of the appropriate bankruptcy filing date; or

• Issue a notification of its determination of the bankruptcy filing date to participants, relevant labor unions, and other affected parties and exempt this determination from PBGC's administrative review process under § 4003.1 of its regulations, thereby allowing speedier judicial review of the determination.

The final rule does not adopt either of these suggestions, and adopts the procedure described in the proposed rule. PBGC believes that obtaining a court order or issuing notification to potentially thousands of participants could be onerous and unduly delay PBGC's processing of a terminated plan. Moreover, such situations are likely to be rare; if future experience reveals problems with the position adopted in this regulation, PBGC may consider amending the regulation to address such problems based on that experience.

The third situation in which there could be ambiguity about the bankruptcy filing date involves liquidation or reorganization cases that are filed, not under the U.S. Bankruptcy Code, but under a ''similar * * * law of a State or political subdivision.'' Some states have insolvency statutes similar to the U.S. Bankruptcy Code and include provisions similar to 11 U.S.C. 301(a), 302(a), and 303(b) under which a case is commenced by the filing of a petition in court. The date on which such a petition is filed will be treated as the bankruptcy filing date under the final rule. Other, perhaps more informal, proceedings, such as assignments for the benefit of creditors, may have different procedures for commencing cases, which may vary from state to state. For such proceedings, PBGC will make case-by-case determinations on what date is most analogous to the date of the filing of a bankruptcy petition and would treat that date as the bankruptcy filing date.

PBGC received a comment on an issue that was not addressed in the proposed rule concerning determination of the bankruptcy filing date. This comment proposed that in a case in which an involuntary bankruptcy petition is filed against a contributing sponsor and the sponsor timely contests the petition, PBGC should use the date on which the bankruptcy court enters an order for relief, rather than the date on which the petition was filed, as the bankruptcy filing date. (See 11 U.S.C. 303(h).) The final rule does not adopt this proposal. Sections 4022(g) and 4044(e) make no distinction between voluntary and involuntary bankruptcies. In describing when they apply, both provisions refer to cases in which a contributing sponsor ''has filed or *has had filed against such person* a petition seeking liquidation or reorganization.'' (Emphasis added.) Moreover, under the Bankruptcy Code, both a voluntary bankruptcy case and an involuntary case are commenced by the filing of a ''petition.'' (Compare 11 U.S.C. 301(a) with 11 U.S.C. 303(a).) Thus, Congress evidently intended that the relevant date under sections 4022(g) and 4044(e) be the date on which the bankruptcy petition was filed, regardless of whether it is a voluntary or involuntary petition.

Changes Unrelated to PPA 2006

The final regulation adopts a few minor changes unrelated to the PPA 2006 amendments, most of which were proposed in the proposed regulation. For example, in §§ 4022.4(a)(1), 4044.2, and 4044.13, the final regulation changes the words ''date of termination'' or ''date of plan termination'' to ''termination date'' to conform to the current phrasing in section 4048(a) of ERISA. The regulation amends § 4022.4(a)(2) to codify PBGC's practice of allowing a participant who has elected an optional life-annuity form of benefit (not a lump sum) at any time up until the date that PBGC is appointed statutory trustee of the plan to receive his benefit in that form, even if it is not one of the PBGC optional forms under § 4022.8(c) of the regulations. The regulation also corrects the reference in § 4022.22 to the provision of the Internal Revenue Code defining ''earned income''; the definition has been moved from section 911(b) to section 911(d)(2) of the Code since PBGC's original regulation was adopted.

A new § 4022.62(b)(5) has been added to clarify that the rules in § 4022.62(b), which generally apply to the calculation of estimated benefits pending PBGC's determination of final benefits, do not override the requirements of subparts A or B of part 4022 with respect to the requirements for a benefit to be guaranteed by PBGC.

In addition to these changes that were in the proposed regulation, the final regulation incorporates some other minor changes unrelated to PPA 2006. The final rule makes non-substantive, clarifying changes to § 4044.13, including examples designed to remove any ambiguity about the dates on which the relevant periods begin and end.

Also, certain provisions of existing part 4044 have been superseded by legislative changes, and some provisions of the existing regulation include anachronistic language. The existing regulation contains a prefatory note to the effect that PBGC intends to amend part 4044 to conform it to current statutory provisions. The final rule does so by deleting or rewording anachronistic language in part 4044; no substantive change in part 4044 is intended. It also removes the no-longer-needed prefatory note in part 4044 (and does not include a prefatory note that the proposed rule would have added to part 4022).

Coordination With Other PPA 2006 Amendments

Section 404 was only one of a number of provisions of PPA 2006 that affect the determination of benefits under Title IV. PBGC's regulations therefore must coordinate the various provisions, where necessary. Below is a description of certain PPA 2006 amendments that interrelate with the changes made by section 404.

Shutdown Benefits and Other Unpredictable Contingent Event Benefits

One situation requiring coordination involves section 403 of PPA 2006, which added new section 4022(b)(8) to the guarantee provisions of Title IV. Section 4022(b)(8) provides a special phase-in rule for shutdown benefits and other ''unpredictable contingent event benefits.'' In cases to which that provision applies, PBGC is to apply the phase-in rules of section 4022 as if a plan amendment had been adopted on the date that the unpredictable contingent event occurred. For example, in a case in which new section 4022(g) does not apply, if an unpredictable contingent event occurred more than two years but less than three years before the termination date, this would mean that the guarantee of a benefit increase arising from the unpredictable contingent event would be 40% phased in.

But if section 4022(g) also applies to such a case, PBGC believes that, as with other benefit increases, the five-year phase-in period must be measured by reference to the bankruptcy filing date, not the termination date. Thus, continuing the above example, if the sponsor's bankruptcy filing date were one year before the plan's termination date, then the guarantee of the unpredictable contingent event benefit would be only 20% rather than 40% phased in, because the unpredictable contingent event would have occurred more than one year but less than two years before the bankruptcy filing date. Section 4022(b)(8) applies to benefits that become payable as a result of an unpredictable contingent event that occurs after July 26, 2005.

PBGC intends to issue a separate proposed rule to implement section 4022(b)(8).

Commercial Airlines

Another provision that raises coordination issues is PPA 2006 section 402(g)(2)(A), which added new section 4022(h) to Title IV. Section 4022(h) modifies the guarantee and asset allocation rules primarily for plans of commercial airlines that make an election under section 402(a)(1) of PPA 2006 (relating to special minimum funding rules) and that terminate within 10 years of such election. Section 4022(h) provides that when those conditions are met, section 4022 is to be applied by treating the first day of the first applicable plan year (for the special airline funding rules) as the termination date of the plan. It also provides generally that the plan's assets are to be allocated first to the benefits that would have been guaranteed but for this provision (*i.e.,* ahead of benefits in all other priority categories under section 4044). Section 4022(h) applies to plan years ending after August 17, 2006.

The final regulation does not address implementation of section 4022(h) or how it interrelates with the amendments made by section 404 of PPA 2006. PBGC intends to do so in a future rulemaking.

Substantial-Owner Benefits

Section 407 of PPA 2006 amended section 4022(b)(5) of ERISA, which previously provided a special phase-in rule for PBGC's guarantee of the benefits of ''substantial owners,'' who were generally defined as those owning more than 10% of the business. Under the amendment, a special phase-in rule applies only to benefits of ''majority owners,'' generally defined as those owning 50% or more of the business. The amendment also completely revamped the way in which the special phase-in rule works. Previously, the substantial-owner phase-in rule was used *in lieu of* the usual phase-in rule for benefits of substantial owners. The new majority-owner phase-in rule, by contrast, applies *in addition to* the usual phase-in rule, but the additional limitation looks back only 10 years rather than 30 years. Finally, section 407 of PPA 2006 amended section 4044 of ERISA to change the treatment in priority category 4 of benefits subject to the majority-owner phase-in. These section 407 amendments are effective for distress terminations in which notices of intent to terminate are provided on or after January 1, 2006, and for involuntary terminations in which notices of determination are provided on or after January 1, 2006.

The final regulation does not address implementation of these changes or how they interrelate with the amendments made by section 404 of PPA 2006. PBGC intends to do so in a future rulemaking.

Applicability

Section 404(c) of PPA 2006 provided that the changes made by section 404 apply to any plan whose termination date occurs while bankruptcy proceedings are pending with respect to the contributing sponsor of the plan, if the bankruptcy proceedings were initiated on or after September 16, 2006. Bankruptcy proceedings are pending, for this purpose, if the contributing sponsor has filed or has had filed against it a petition seeking liquidation or reorganization in a case under title 11, United States Code, or under any similar Federal law or law of a State or political subdivision, and the case has not been dismissed as of the termination date of the plan. Accordingly, the final regulation, which implements the statutory changes, likewise applies to terminations occurring during a bankruptcy proceeding of the contributing sponsor that was initiated on or after September 16, 2006.

Compliance With Rulemaking Guidelines

Executive Order 12866

PBGC has determined, in consultation with the Office of Management and Budget, that this final rule is a ''significant regulatory action'' under Executive Order 12866. The Office of Management and Budget has therefore reviewed this final rule under that executive order.

Section 404 of PPA 2006 made significant changes to provisions of Title IV of ERISA relating to the guarantee of benefits under section 4022 and the allocation of a terminated plan's assets under section 4044. This final rule implements those statutory changes and, as described in this preamble, clarifies the implications of those changes in areas where there might be ambiguity in the absence of a regulation. The final rule provides guidance to participants and beneficiaries of terminated plans about their benefits paid by PBGC. It will also assist PBGC staff in making benefit determinations. Except for a few minor housekeeping items described above under ''Changes Unrelated to PPA 2006,'' the final rule is limited to implementing and clarifying the changes made by section 404.

Under Section 3(f)(1) of Executive Order 12866, a regulatory action is economically significant if ''it is likely to result in a rule that may * * * [h]ave an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities. The PBGC has determined that this final rule does not cross the $100 million threshold for economic significance and is not otherwise economically significant.

As discussed above, the economic effect of the final rule is attributable almost entirely to the economic effect of section 404(c) of PPA 2006. Accordingly, PBGC bases its determination on its experience with plans subject to the statutory provision. As stated above in Applicability, the statutory provision applies to any plan whose termination date occurs while bankruptcy proceedings are pending with respect to the contributing sponsor of the plan, if the bankruptcy proceedings were initiated on or after September 16, 2006.

PBGC estimates that, to date, the total effect of section 404(c) of PPA—in terms of lower benefits paid to participants and associated savings for PBGC—is between $10 and $15 million. Many of the plans subject to the statutory provision had frozen benefit accruals before the date of bankruptcy filing, which resulted in the statutory provision having minimal, if any, effect. For those plans for which the statutory provision did significantly affect benefits, the effect was lessened because the date of bankruptcy filing was less than a year (and sometimes much less) before the date of plan termination.

For various reasons, it is difficult to predict the future effect of the statutory provision and related regulatory changes. For example, PBGC cannot predict with certainty which plans will terminate during the bankruptcy of the plan sponsor, how long the plan sponsor will be in bankruptcy before the plan terminates, whether the plan will be frozen, the funding level of the plan, or what benefits will be affected by the guarantee limits. However, given the relatively low estimate of the effect of the statutory provision to date, PBGC has determined that the annual effect of the final rule will be less than $100 million.

Regulatory Flexibility Act

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this final regulation will not have a significant economic impact on a substantial number of small entities. The amendments implement and in some cases clarify statutory changes made in PPA 2006; they do not impose new burdens on entities of any size.

Virtually all of the statutory changes affect only PBGC and persons who receive benefits from PBGC. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4001

Pensions.

29 CFR Part 4022

Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Pension insurance, Pensions.

For the reasons given above, PBGC is amending 29 CFR parts 4001, 4022, and 4044 as follows.

PART 4001—TERMINOLOGY

■ 1. The authority citation for part 4001 continues to read as follows:

Authority: 29 U.S.C. 1301, 1302(b)(3).

■ 2. In § 4001.2:
■ a. Amend the definition of *basic-type benefit* by adding a sentence at the end.
■ b. Amend the definition of *sufficient for guaranteed benefits* by adding two sentences at the end.
■ c. Add definitions for *bankruptcy filing date* and *non-PPA 2006 bankruptcy termination* in alphabetical order.

The additions read as follows:

§ 4001.2 Definitions

* * * * *

Bankruptcy filing date means, with respect to a plan, the date on which a petition commencing a case under the United States Bankruptcy Code is filed, or the date on which any similar filing is made commencing a case under any similar Federal law or law of a State or political subdivision, with respect to the contributing sponsor of the plan, if such case has not been dismissed as of the termination date of the plan. If a bankruptcy petition is filed under one chapter of the United States Bankruptcy Code, or under one chapter or provision of any such similar law, and the case is converted to a case under a different chapter or provision of such Code or similar law (for example, a Chapter 11 reorganization case is converted to a Chapter 7 liquidation case), the date of the original petition is the bankruptcy filing date. If such a plan has more than one contributing sponsor:

(1) If all contributing sponsors entered bankruptcy on the same date, that date is the bankruptcy filing date;

(2) If all contributing sponsors did not enter bankruptcy on the same date (or if not all contributing sponsors are in bankruptcy), PBGC will determine the date that will be treated as the bankruptcy filing date based on the facts and circumstances, which may include such things as the relative sizes of the contributing sponsors, the relative amounts of their minimum required contributions to the plan, the timing of the different bankruptcies, and the expectations of participants.

Basic-type benefit * * * In a PPA 2006 bankruptcy termination, it also includes a benefit accrued by a participant, or to which a participant otherwise became entitled, on or before the plan's termination date but that is not guaranteed solely because of the provisions of §§ 4022.3(b) or 4022.4(c).

* * * * *

Non-PPA 2006 bankruptcy termination means a plan termination that is not a PPA 2006 bankruptcy termination.

* * * * *

Sufficient for guaranteed benefits * * * In a PPA 2006 bankruptcy termination, the determination whether a plan is sufficient for guaranteed benefits is made taking into account the limitations in sections 4022(g) and 4044(e) of ERISA (and corresponding provisions of these regulations). The determinations of which benefits are guaranteed and which benefits are in priority category 3 under section 4044(a)(3) of ERISA are made by reference to the bankruptcy filing date, but the present values of those benefits are determined as of the proposed termination date and the date of distribution.

* * * * *

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 3. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

§ 4022.2 [Amended]

■ 4. In § 4022.2, amend the introductory text by removing the words ''annuity, Code'' and adding in their place ''annuity, bankruptcy filing date, Code''; and by removing the words ''nonforfeitable benefit, normal retirement age'' and adding in their place ''nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age''.

■ 5. In § 4022.3:
■ a. Designate the introductory text as paragraph (a) with the heading ''*General.*''
■ b. Redesignate paragraphs (a), (b), and (c) as paragraphs (1), (2), and (3).
■ c. Add new paragraph (b) to read as follows:

§ 4022.3 Guaranteed benefits.

* * * * *

(b) *PPA 2006 bankruptcy termination.* (1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraph (a) of this section.

(2) *Condition for entitlement satisfied between bankruptcy filing date and termination date.* If a participant becomes entitled to a subsidized early retirement or other benefit before the termination date (or on or before the termination date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die) but on or after the bankruptcy filing date (or after the bankruptcy filing date, in the case of a requirement that a participant attain a particular age, earn a particular amount of service, become disabled, or die), the subsidy or other benefit is not guaranteed because the participant had not satisfied the conditions for entitlement by the bankruptcy filing date. In such a case, the participant may have been put into pay status with the subsidized early retirement or other benefit by the plan administrator, because the plan was ongoing at the time. Even though the subsidy or other benefit is not guaranteed, the participant may be entitled to another benefit from PBGC (at that time or in the future). If so, PBGC will continue paying the participant a benefit, but in an amount reduced to reflect that the subsidy or other benefit is not guaranteed. PBGC will also allow a similarly situated participant who had not started receiving a subsidized early retirement or other benefit before PBGC became trustee of the plan to begin receiving a benefit (if the participant would have been allowed under the plan to begin receiving benefits and has reached his Earliest PBGC Retirement Date, as defined in § 4022.10), but in an amount that does not include the subsidy or other benefit.

(3) *Examples.* (i) *Vesting.* A plan provides for 5-year ''cliff'' vesting—*i.e.,* benefits become 100% vested when the participant completes five years of service; before the five-year mark, benefits are 0% vested. The contributing sponsor of the plan files a bankruptcy petition on November 15, 2006. The plan terminates with a termination date of December 4, 2007, and PBGC becomes statutory trustee of the plan. A

participant had four years and six months of service at the bankruptcy filing date and became vested in May 2007. None of the participant's benefit is guaranteed because none of the benefit was nonforfeitable as of the bankruptcy filing date.

(ii) *Subsidized early retirement benefit.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section), but the plan also provides that a participant may retire from active employment at any age with a fully subsidized (*i.e.,* not actuarially reduced) early retirement benefit if he has completed 30 years of service. The plan also provides that a participant who is age 60 and has completed 20 years of service may retire from active employment with an early retirement benefit, reduced by three percent for each year by which the participant's age at benefit commencement is less than 65. A participant was age 61 and had 29 years and 6 months of service at the bankruptcy filing date. The participant continued working for another six months, then retired as of June 1, 2007, and immediately began receiving from the plan the fully subsidized ''30-and-out'' early retirement benefit. PBGC will continue paying the participant a benefit, but PBGC's guarantee does not include the full subsidy for the ''30-and-out'' benefit, because the participant satisfied the conditions for that benefit after the bankruptcy filing date. The guarantee does include, however, the partial subsidy associated with the ''60/20'' early retirement benefit, because the participant satisfied the conditions for that benefit before the bankruptcy filing date.

(iii) *Accruals after bankruptcy filing date.* The facts regarding the plan are the same as in Example (i) (paragraph (b)(3)(i) of this section). A participant has a vested, accrued benefit of $500 per month as of the bankruptcy filing date. At the plan's termination date, the participant has a vested, accrued benefit of $512 per month. His guaranteed benefit is limited to $500 per month—the accrued, nonforfeitable benefit as of the bankruptcy filing date.

■ 6. In § 4022.4:

■ a. Amend paragraph (a)(1) by removing ''date of the termination'' and adding in its place ''termination date''.

■ b. Revise paragraph (a)(2) and add paragraph (c) to read as follows:

§ 4022.4 Entitlement to a benefit.

(a) * * *

(2) The benefit is payable in an optional life-annuity form of benefit that the participant or beneficiary elected on or before the termination date of the plan or, if later, the date on which PBGC became statutory trustee of the plan.

* * * * *

(c) In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (a)(1) and (3) of this section. In making this substitution for purposes of paragraph (a)(3) of this section, the rule in § 4022.3(b)(2) (dealing with the situation where the condition for entitlement was satisfied between the bankruptcy filing date and the termination date) shall apply.

■ 7. In § 4022.6:

■ a. Amend paragraph (a) by removing ''provided in paragraph (b) of'' and adding in its place ''otherwise provided in''.

■ b. Add new paragraph (d) to read as follows:

§ 4022.6 Annuity payable for total disability.

* * * * *

(d) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' in paragraph (a) of this section.

■ 8. In § 4022.21:

■ a. Amend paragraph (a)(1) by removing ''(b), (c) and (d)'' in the first sentence and adding in its place ''(b), (c), (d), and (e).''

■ b. Add new paragraph (e) to read as follows:

§ 4022.21 Limitations; in general.

* * * * *

(e) *PPA 2006 bankruptcy termination.* (1) *Substitution of bankruptcy filing date.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraph (a)(1) of this section.

(2) *Examples.* (i) *Straight-life annuity.* A plan provides for normal retirement at age 65. If a participant terminates employment at or after age 55 with 25 years of service, the plan will pay an unreduced early retirement benefit, plus a temporary supplement of $400 per month until the participant reaches age 62. When the plan's contributing sponsor files a bankruptcy petition in 2008, a participant who is still working has a vested, accrued benefit of $1,500 per month (as a straight-life annuity) and has satisfied the age and service requirements for the unreduced early retirement benefit. The participant retires eight months later, when his vested, accrued benefit is $1,530 per month (as a straight-life annuity). He elects to receive his benefit as a straight-life annuity, and begins receiving a total benefit of $1,930: His $1,530 accrued benefit plus the $400 temporary supplement. The plan terminates six months later, during the sponsor's bankruptcy. No Title IV limitations apply to the participant's benefit, other than the limitation in paragraph (a)(1) of this section. PBGC will guarantee $1,500, the amount of the participant's accrued benefit (as a straight-life annuity) as of the bankruptcy filing date.

(ii) *Joint-and-survivor annuity.* The facts are the same as Example (i) (paragraph (e)(2)(i) of this section), except that the participant elects to receive his benefit as a 50% joint-and-survivor annuity. Before plan termination, the participant was receiving a total benefit of $1,777: His $1,530 accrued benefit, reduced by 10% for the survivor benefit, plus the $400 temporary supplement. From the termination date until the participant reaches age 62, PBGC will guarantee $1,500: The $1,500 accrued benefit (as a straight-life annuity) as of the bankruptcy filing date, reduced to $1,350 to reflect the 10% reduction for the survivor benefit, plus $150 of the temporary supplement that, in combination with the $1,350, does not exceed the $1,500 accrued-at-normal limit. When the participant reaches age 62, his guaranteed benefit is reduced to $1,350, because under plan provisions the temporary supplement ceases at that time.

■ 9. Revise § 4022.22 to read as follows:

§ 4022.22 Maximum guaranteeable benefit.

(a) *In general.* Subject to section 4022B of ERISA and part 4022B of this chapter, and except as provided in paragraph (b) of this section, benefits payable with respect to a participant under a plan shall be guaranteed only to the extent that such benefits do not exceed the actuarial value of a benefit in the form of a life annuity payable in monthly installments, commencing at age 65, equal to the lesser of—

(1) One-twelfth of the participant's average annual gross income from his employer during either his highest-paid five consecutive calendar years in which he was an active participant under the plan, or if he was not an active participant throughout the entire such period, the lesser number of calendar years within that period in which he was an active participant under the plan; or

(2) $750 multiplied by the fraction x/$13,200 where ''x'' is the Social Security contribution and benefit base determined under section 230 of the Social Security Act in effect at the termination date of the plan.

(b) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination—

(1) The five-year period described in paragraph (a)(1) of this section shall not include any calendar years that end after the bankruptcy filing date.

(2) ''Bankruptcy filing date'' is substituted for ''termination date of the plan'' in paragraph (a)(2) of this section. Example: A contributing sponsor files a bankruptcy petition in 2007. The sponsor's plan terminates in a distress termination with a termination date in 2008. PBGC will compute participants' maximum guaranteeable benefits based on the amount determined under paragraph (a)(2) for 2007 ($4,125.00 as a straight-life annuity starting at age 65).

(c) *Gross income.* For purposes of paragraph (a)(1) of this section—

(1) Gross income means ''earned income'' as defined in section 911(d)(2) of the Code, determined without regard to any community property laws.

(2) If the plan is one to which more than one employer contributes, and during any calendar year the participant received gross income from more than one such contributing employer, then the amounts so received shall be aggregated in determining the participant's gross income for the calendar year.

■ 10. In § 4022.23, add paragraph (g) to read as follows:

§ 4022.23 Computation of maximum guaranteeable benefits.

* * * * *

(g) *PPA 2006 bankruptcy termination.* (1) In a PPA 2006 bankruptcy termination, except as provided in the next sentence, ''bankruptcy filing date'' is substituted for ''termination date'' and ''date of plan termination'' each place that ''termination date'' or ''date of plan termination'' appears in paragraphs (c), (d), and (f) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will determine the factors in paragraphs (d), (e), and (f) based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date. (The case of Participant C in the example below illustrates this exception.)

(2) *Example.* (i) *Facts.* The contributing sponsor of a plan files a bankruptcy petition in July 2007, and the sponsor's plan terminates in a PBGC-initiated termination with a termination date in July 2008. At the bankruptcy filing date:

(A) Participant A was age 64 and receiving a benefit from the plan in the form of a 10-year certain-and-continuous annuity, with 4 years remaining in the certain period.

(B) Participant B was age 60 and 6 months and was still working. She began receiving a benefit from the plan in the form of a 50% joint-and-survivor annuity when she turned 61 in January 2008. Her spouse was the same age as she.

(C) Participant C was age 60 and was receiving a $3,000/month benefit from the plan in the form of a 50% joint-and-survivor annuity, with his spouse, age 58, as his beneficiary. Participant C he died in February 2008 and in March 2008 his spouse began receiving a 50% survivor annuity of $1,500/month.

(D) Participant D was age 59 and was still working; he began receiving a straight-life annuity from the PBGC in July 2010 when he was 62 years old.

(ii) *Conclusions.* In accordance with § 4022.22(b)(2), PBGC computes the maximum guaranteeable monthly benefit for Participants A, B, and D and for the spouse of Participant C based on the $4,125.00 amount determined under § 4022.22(a)(2) for 2007. (The gross-income-based limitation in § 4022.22(a)(1) does not apply to any of these participants.)

(A) Participant A's maximum guaranteeable monthly benefit is $3,759.53 [$4,125.00 × .93 (7% reduction for a benefit starting at age 64) × .98 (2% reduction for a certain-and-continuous annuity with 4 years remaining in the certain period)].

(B) Participant B's maximum guaranteeable monthly benefit is $2,673.00 [$4,125.00 × .72 (28% reduction for a benefit starting at age 61) × .90 (10% reduction due to the 50% joint-and-survivor feature)].

(C) Participant C's spouse's maximum guaranteeable monthly benefit is $2,351.25 [$4,125.00 × .57 (43% reduction for a benefit starting at age 58; no reduction for the form of benefit because the spouse's survivor benefit is a straight-life annuity)]. Because that amount exceeds the spouse's $1,500 monthly survivor benefit, the spouse's benefit is not reduced by the maximum guaranteeable benefit limitation.

(D) Participant D's maximum guaranteeable monthly benefit is $3,258.75 [$4,125.00 × .79 (21% reduction for a benefit starting at age 62)].

■ 11. In § 4022.24, add paragraph (f) to read as follows:

§ 4022.24 Benefit increases.

* * * * *

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, except as provided in the next sentence, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (a) and (c) of this section. In any case in which an event (such as the death of a participant or beneficiary who was alive on the bankruptcy filing date) that affects who is receiving or will receive a benefit from PBGC has occurred on or before the termination date, PBGC will compute the benefit based on the form of benefit that was being paid (or was payable) and the person who was receiving or was entitled to receive the benefit from PBGC as of the termination date, consistent with § 4022.23(g).

■ 12. In § 4022.25, add paragraph (f) to read as follows:

§ 4022.25 Five-year phase-in of benefit guarantee for participants other than substantial owners.

* * * * *

(f) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''termination date'' each place that ''termination date'' appears in paragraphs (c) and (d) of this section. Example: A plan amendment that was adopted and effective in February 2007 increased a participant's benefit by $300 per month (as computed under § 4022.24). The contributing sponsor of the plan filed a bankruptcy petition in March 2009 and the plan has a termination date in April 2010. PBGC's guarantee of the participant's benefit increase is limited to $120 ($300 × 40%), because the increase was made more than 2 years but less than 3 years before the bankruptcy filing date.

Subpart C—Section 4022(c) Benefits

■ 13. Revise the heading for subpart C to read as set forth above.

■ 14. Add new § 4022.51 under subpart C to read as follows:

§ 4022.51 Determination of section 4022(c) benefits in a PPA 2006 bankruptcy termination.

(a) *Amount of unfunded nonguaranteed benefits.* For purposes of this section, and subject to paragraph (b) of this section, a plan's amount of unfunded nonguaranteed benefits means the plan's outstanding amount of benefit liabilities, as defined in section 4001(a)(19) of ERISA, determined as of the plan's termination date. A plan's amount of unfunded nonguaranteed

benefits is multiplied by the applicable recovery ratio to determine the aggregate amount to be allocated with respect to participants of the plan under section 4022(c)(1) of ERISA.

(b) *Benefits included in unfunded nonguaranteed benefits.* For purposes of computing benefits under section 4022(c) of ERISA in a PPA 2006 bankruptcy termination, unfunded nonguaranteed benefits are benefits under a plan as of the plan's termination date that are neither guaranteed by PBGC (taking into account section 4022(g) of ERISA) nor funded by the plan's assets (taking into account section 4044(e) of ERISA).

(c) *Determination of recovery ratio.* In a PPA 2006 bankruptcy termination, the recovery ratio under section 4022(c)(3) of ERISA is determined as follows. The numerator is based on PBGC's recoveries under section 4062, 4063, or 4064, valued as of the plan's (or plans') termination date (or dates). The denominator of the recovery ratio is based on the amount of unfunded benefit liabilities, as defined in section 4001(a)(18) of ERISA, as of the plan's (or plans') termination date (or dates).

■ 15. In § 4022.61:

■ a. Amend paragraph (c) by removing ''4022.22(b)'' and adding in its place ''4022.22(a)(2)'' and by adding a sentence at the end.

■ b. Amend paragraph (f) introductory text by removing ':'' and adding in its place ''.'' and by adding a parenthetical reference at the end.

The additions read as follows:

§ 4022.61 Limitations on benefit payments by plan administrator.

* * * * *

(c) * * * In a PPA 2006 bankruptcy termination, the maximum guaranteeable benefit is determined as of the bankruptcy filing date, in accordance with §§ 4022.22(b) and 4022.23(g).

* * * * *

(f) * * * (For examples addressing issues specific to a PPA 2006 bankruptcy termination, see §§ 4022.21(e), 4022.22(b), and 4022.23(g).)

* * * * *

■ 16. In § 4022.62:

■ a. Redesignate paragraph (e) as paragraph (f).

■ b. Amend the introductory text of newly redesignated paragraph (f) by removing ':'' and adding in its place ''.'' and by adding a parenthetical reference at the end.

■ c. Revise paragraphs (b)(1) and (b)(2), and add paragraph (b)(5) and new paragraph (e) to read as follows:

§ 4022.62 Estimated guaranteed benefits.

* * * * *

(b) * * *

(1) *Non-PPA 2006 bankruptcy termination.* In a non-PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the proposed termination date, the plan administrator shall use the participant's age and benefit payable under the plan as of the proposed termination date.

(ii) For benefits payable with respect to a participant who enters pay status after the proposed termination date, the plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the proposed termination date.

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination:

(i) For benefits payable with respect to a participant who is in pay status on or before the bankruptcy filing date, the plan administrator shall use the participant's age and benefit payable under the plan as of the bankruptcy filing date.

(ii) For benefits payable with respect to a participant who enters pay status after the bankruptcy filing date, the plan administrator shall use the participant's age as of the benefit commencement date and his service and compensation as of the bankruptcy filing date.

* * * * *

(5) Nothing in this paragraph (b) overrides the provisions of subparts A and B of part 4022 with respect to the requirements necessary for a benefit to be guaranteed by PBGC.

* * * * *

(e) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in paragraph (c) of this section.

(f) * * * (For an example addressing issues specific to a PPA 2006 bankruptcy termination, see § 4022.25(f).).

* * * * *

■ 17. In § 4022.63:

■ a. Redesignate the introductory text of paragraph (c) as paragraph (c)(1) with the heading ''*In general.*''

■ b. Redesignate paragraph (c)(1) as paragraph (c)(1)(i) and redesignate paragraph (c)(2) as paragraph (c)(1)(ii).

■ c. Add new paragraphs (b)(3) and (c)(2).

■ d. In paragraph (e), amend Example 1 by adding a paragraph at the end.

The additions read as follows:

§ 4022.63 Estimated title IV benefits.

* * * * *

(b) * * *

(3) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' in the first sentence of paragraph (b)(2) of this section.

(c) * * *

(2) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, ''bankruptcy filing date'' is substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in paragraph (c)(1) of this section.

* * * * *

(e) * * *

Example 1. * * *

* * * * *

PPA 2006 bankruptcy termination. In a PPA 2006 bankruptcy termination, the methodology would be the same, but ''bankruptcy filing date'' would be substituted for ''proposed termination date'' each place that ''proposed termination date'' appears in the example, and the numbers would change accordingly.

* * * * *

■ 18. In § 4022.81:

■ a. Redesignate paragraphs (c)(3) and (4) as paragraphs (c)(4) and (5).

■ b. Add new paragraph (c)(3) to read as follows:

§ 4022.81 General rules.

* * * * *

(c) * * *

(3) *PPA 2006 bankruptcy termination.* The provisions of paragraphs (c)(1) and (2) of this section regarding the overpayments and underpayments that will be included in the account balance apply regardless of whether the termination is a PPA 2006 bankruptcy termination.

* * * * *

■ 19. In § 4022.82, revise paragraph (a)(1) to read as follows:

§ 4022.82 Method of recoupment.

(a) * * *

(1) *Computation.* The PBGC will determine the fractional multiplier by dividing the amount of the net overpayment by the present value of the benefit payable with respect to the participant under title IV of ERISA.

(i) *Non-PPA 2006 bankruptcy termination.* In a non-PPA bankruptcy termination, the PBGC will determine the present value of the benefit to which a participant or beneficiary is entitled under title IV of ERISA as of the termination date, using the PBGC interest rates and factors in effect on that date.

(ii) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination, PBGC will determine the amount of benefit payable with respect to the participant under title IV of ERISA taking into account the limitations in sections 4022(g) and 4044(e) (and corresponding provisions of these regulations), and will determine the present value of that amount as of the termination date, using PBGC interest rates and factors in effect on the termination date.

(iii) *Facts and circumstances.* The PBGC may, however, utilize a different date of determination if warranted by the facts and circumstances of a particular case.

* * * * *

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 20. The authority citation for part 4044 is revised to read as follows (note is removed):

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

§ 4044.1 [Amended]

■ 21. In § 4044.1:

■ a. Amend paragraph (b)(1) by removing from the second sentence the words ''receive or that expect to receive a Notice of Inability to Determine Sufficiency from PBGC and,'' and by removing from the end of the paragraph the parenthetical ''(See Note at beginning of part 4044.)''.

■ b. Amend paragraph (b)(2) by removing ''received a Notice of Sufficiency issued by PBGC pursuant to part 2617 and has'' and by removing ''(See Note at beginning of part 4044.)''.

§ 4044.2 [Amended]

■ 22. In § 4044.2:

■ a. Amend paragraph (a) by removing ''annuity, basic-type benefit'' and adding in its place ''annuity, bankruptcy filing date, basic-type benefit'' and by removing ''nonforfeitable benefit, normal retirement age'' and adding in its place ''nonforfeitable benefit, non-PPA 2006 bankruptcy termination, normal retirement age''.

■ b. In paragraph (b), amend the definition of ''non-trusteed plan'' by removing ''receives a Notice of Sufficiency from PBGC and'' and ''in accordance with part 2617 of this chapter. (See Note at the beginning of part 4044.);''; remove the definition of ''notice of sufficiency''; and amend the definition of ''valuation date'' by removing ''date of termination'' and adding in its place ''termination date''.

■ c. In paragraph (e), remove the definition of ''qualifying bid''.

§ 4044.3 [Amended]

■ 23. In § 4044.3(b):

■ a. Remove ''pursuant to a Notice of Sufficiency under the provisions of subpart C of part 2617 of this chapter'' and add in its place ''under § 4041.28 or § 4041.50''.

■ b. Remove ''(See Note at beginning of part 4044.)''.

§ 4044.10 [Amended]

■ 24. In § 4044.10, amend the last sentence of paragraph (b) by adding before the period at the end: '', but, in a PPA 2006 bankruptcy termination, subject to the limitations in sections 4022(g) and 4044(e) of ERISA (and corresponding provisions of these regulations)''.

■ 25. In § 4044.13:

■ a. Paragraph (a) is revised.

■ b. Amend paragraph (b)(2)(i) by removing ''Except as provided in the next sentence,'' and adding in its place ''Except as provided in paragraph (b)(3),'' and by removing the second sentence.

■ c. Amend paragraph (b)(2)(ii) by removing the word ''For'' and adding ''Except as provided in paragraph (b)(3), for'' in its place at the beginning of the first sentence.

■ d. Paragraph (c) is added.

The revision and addition read as follows:

§ 4044.13 Priority category 3 benefits.

(a) *Definition.* The benefits in priority category 3 are those annuity benefits that were in pay status before the beginning of the 3-year period ending on the termination date, and those annuity benefits that could have been in pay status (then or as of the next payment date under the plan's rules for starting benefit payments) for participants who, before the beginning of the 3-year period ending on the termination date, had reached their Earliest PBGC Retirement Date (as determined under § 4022.10 of this chapter) based on plan provisions in effect on the day before the beginning of the 3-year period ending on the termination date. For example, in a plan with a termination date of September 1, 2012, the benefits in priority category 3 are those annuity benefits that were in pay status on or before September 1, 2009, and those annuity benefits that could have been in pay status for participants who, on or before September 1, 2009, had reached their Earliest PBGC Retirement Date based on plan provisions in effect on September 1, 2009. Benefit increases, as defined in § 4022.2, that were in effect throughout the 5-year period ending on the termination date, including automatic benefit increases during that period to the extent provided in paragraph (b)(5) of this section, shall be included in determining the priority category 3 benefit. For example, in a plan with a termination date of September 1, 2012, a benefit increase that was in effect throughout the 5-year period from September 2, 2007, to September 1, 2012, is included in priority category 3. Benefits are primarily basic-type benefits, although nonbasic-type benefits will be included if any portion of a participant's priority category 3 benefit is not guaranteeable under the provisions of subpart A of part 4022 and § 4022.21 of this chapter.

* * * * *

(c) *PPA 2006 bankruptcy termination.* In a PPA 2006 bankruptcy termination:

(1) For purposes of this paragraph (c), ''applicable pre-termination period'' means the period—

(i) Beginning on the first day of the 5-year period ending on the bankruptcy filing date; and

(ii) Ending on the termination date. For example, if the bankruptcy filing date is January 15, 2008, and the termination date is March 22, 2009, the applicable pre-termination period is the period beginning on January 16, 2003, and ending on March 22, 2009.

(2) ''Applicable pre-termination period'' is substituted for ''5-year period ending on the termination date'' each place that ''5-year period ending on the termination date'' appears in paragraphs (a) and (b) of this section.

(3) Except as provided in paragraph (a)(2) of this section, ''bankruptcy filing date'' is substituted for ''termination date'' and ''date of the plan termination'' each place that ''termination date'' and ''date of the plan termination'' appear in paragraphs (a) and (b) of this section. In paragraph (b)(5) of this section, ''the bankruptcy filing date'' is substituted for ''termination'' in the phrase ''during the fourth and fifth years preceding termination.''

(4) Example: A plan provides for normal retirement at age 65 and has only one early retirement benefit: a subsidized early retirement benefit for participants who terminate employment on or after age 60 with 20 years of service. These plan provisions have been unchanged since 1990. The contributing sponsor of the plan files a bankruptcy petition in June 2008, and the plan terminates during the bankruptcy with a termination date in September 2010. A participant retired in

July 2007, at which time he was age 60 and had 20 years of service, and began receiving the subsidized early retirement benefit. The participant has no benefit in priority category 3, because he was not eligible to retire three or more years before the June 2008 bankruptcy filing date.

§ 4044.14 [Amended]

■ 26. Amend § 4044.14 by removing ''basic-type benefits that do not exceed the guarantee limits set forth in subpart B of part 4022 of this chapter'' and adding in its place ''guaranteed benefits''.

§ 4044.41 [Amended]

■ 27. Amend § 4044.41, paragraph (a)(2), by removing from the second sentence the words ''with respect to which PBGC has issued a Notice of Sufficiency'' and removing from the end the parenthetical ''(See Note at beginning of part 4044.)''.

§ 4044.71 [Amended]

■ 28. Amend § 4044.71 by removing ''under the qualifying bid''.

§ 4044.72 [Amended]

■ 29. Amend § 4044.72, paragraph (a)(2), by removing ''pursuant to § 2617.4(c) of this chapter'' and ''(See Note at beginning of part 4044.)''.

§ 4044.73 [Amended]

■ 30. In § 4044.73:

■ a. In paragraph (b), first sentence, remove ''pursuant to § 2617.12 of part 2617 of this chapter''.

■ b. At the end of the section, remove ''(See Note at beginning of part 4044.)''.

§ 4044.75 [Amended]

■ 31. In 4044.75:

■ a. In paragraph (a), remove ''qualifying bid'' and add in its place ''irrevocable commitment''.

■ b. At the end of the section, remove ''(See Note at beginning of part 4044.)''.

Issued in Washington, DC, this 3rd day of June 2011.

Joshua Gotbaum,

Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing publication of this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 2011–14241 Filed 6–13–11; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2011–0235]

RIN 1625–AA08

Special Local Regulation; Monongahela River, Morgantown, WV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary special local regulation from mile marker 101.0 (Morgantown Highway Bridge) to mile marker 102.0 (Morgantown Lock and Dam) on the Monongahela River, extending the entire width of the river. The special local regulation is being established to safeguard participants of the Mountaineer Triathlon from the hazards of marine traffic. Entry into, movement within, and departure from this Coast Guard regulated area is prohibited unless authorized by the Captain of the Port or a designated representative.

DATES: This proposed rule is effective from 5:45 a.m. until 10 a.m. on June 26, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0235 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0235 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail ENS Robyn Hoskins, Marine Safety Unit Pittsburgh, Coast Guard; telephone 412–644–5808 Ext. 2140, e-mail *Robyn.G.Hoskins@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM). Publishing a NPRM would be impracticable with respect to this rule based on the short notice given the Coast Guard for this event. Immediate action is needed to safeguard participants during the Mountaineer Triathlon marine event from the hazards imposed by marine traffic.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing an NPRM and delaying its effective date would be impracticable based on the short notice received for the event. Immediate action is needed to provide safety and protection during the Mountaineer Triathlon marine event that will occur in the city of Morgantown, WV.

Basis and Purpose

The Coast Guard is establishing a temporary special local regulation from mile marker 101.0 (Morgantown Highway Bridge) to mile marker 102.0 (Morgantown Lock and Dam) on the Monongahela River, extending the entire width of the river. The special local regulation is being established to safeguard participants of the Mountaineer Triathlon from the hazards of marine traffic.

Discussion of Rule

The Captain of the Port Pittsburgh is establishing a temporary special local regulation from mile marker 101.0 (Morgantown Highway Bridge) to mile marker 102.0 (Morgantown Lock and Dam) on the Monongahela River, extending the entire width of the river. The special local regulation is being established to safeguard participants of the Mountaineer Triathlon from the hazards of marine traffic that will occur in the city of Morgantown, WV. Persons or vessels shall not enter into, depart from, or move within the regulated area without permission from the Captain of the Port Pittsburgh or his authorized representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465. This rule is effective from 5:45 a.m. to 10 a.m. on June 26, 2011. The Captain of the Port Pittsburgh will inform the public

through broadcast notices to mariners of the enforcement period for the special local regulation as well as any changes in the planned schedule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This rule will only be in effect for less than one day and notifications to the marine community will be made through broadcast notice to mariners. The impacts on routine navigation are expected to be minimal.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit that portion of the waterways from mile marker 101.0 (Morgantown Highway Bridge) to mile marker 102.0 (Morgantown Lock and Dam) on the Monongahela River, from 5:45 a.m. to 10 a.m. on June 26, 2011. The special local regulation will not have a significant economic impact on a substantial number of small entities because this rule will only be in effect for less than one day.

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

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

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

Technical Standards

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

systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction. This rule involves establishing a special local regulation, requiring a permit wherein an analysis of the environmental impact of the regulations was performed. Under figure 2–1, paragraph (34)(h.), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add § 100.T08–0235 to read as follows:

§ 100.T08–0235 Special Local Regulation; Monongahela River, Morgantown, WV.

(a) *Location.* The following area is a regulated area: All waters of the Monongahela River, from surface to bottom, from mile marker 101.0 (Morgantown Highway Bridge) to mile marker 102.0 (Morgantown Lock and Dam) on the Monongahela River, extending the entire width of the river. These markings are based on the USACE's *Monongahela River Navigation Charts* (Chart 1, January 2004) using North American Datum of 1983 (NAD 1983).

(b) *Periods of enforcement.* This rule will only be enforced from 5:45 a.m. through 10 a.m. on June 26, 2011. The Captain of the Port Pittsburgh or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the regulated area as well as any changes in the planned schedule.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, entry into this regulated area is prohibited unless authorized by the Captain of the Port Pittsburgh.

(2) Persons or vessels requiring entry into, departure from, or passage through a regulated area must request permission from the Captain of the Port Pittsburgh or a designated representative. They may be contacted on VHF–FM Channel 13 or 16, or through Coast Guard Sector Ohio Valley at 1–800–253–7465.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port Pittsburgh and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel includes Commissioned, Warrant, and Petty Officers of the U.S. Coast Guard.

Dated: May 9, 2011.

R.V. Timme,

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

[FR Doc. 2011–14624 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0131, FRL–9317–9]

Approval and Promulgation of Air Quality Implementation Plans; State of California; Interstate Transport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the California Regional Haze Plan (''CRHP''), a revision to the California State Implementation Plan (''SIP'') addressing Clean Air Act (''CAA'' or ''Act'') requirements and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. Regional haze is caused by emissions of air pollutants from many sources located over a wide geographic area. Also, EPA is approving certain portions of the CRHP and the ''Interstate Transport State Implementation Plan (SIP) for 8-hour Ozone and $PM_{2.5}$ to satisfy the Requirements of Clean Air Act section 110(a)(2)(D)(i) for the State of California'' (''2007 Transport SIP''), submitted by California on November 16, 2007, as meeting the requirements of CAA Section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility for the 1997 8-hour ozone and 1997 particulate matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). EPA proposed to approve these SIP revisions on March 15, 2011 (76 FR 13944).

DATES: *Effective Date:* This rule is effective on July 14, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0131 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available at either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jerry Wamsley, U.S. Environmental Protection Agency, Region 9, Air Division, Planning Office, Air-2, 75 Hawthorne Street, San Francisco, CA 94105; via telephone at (415) 947–4111; or via electronic mail at *wamsley.jerry@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us,'' or ''our,'' refer to EPA.

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I. Background

A. The Regional Haze Problem

Regional haze is visibility impairment produced by many sources and activities located across a broad geographic area that emit fine particles ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), and their precursors (*e.g.,* sulfur dioxide

(SO_2), oxides of nitrogen (NO_X) and in some cases, ammonia (NH_3) and volatile organic compounds (VOC)). Fine particle precursors react in the atmosphere to form fine particulate matter that impairs visibility by scattering and absorbing light, thereby reducing the clarity, color, and visible distance that one can see. Also, $PM_{2.5}$ can cause serious health effects and mortality in humans and contributes to environmental impacts, such as acid deposition and eutrophication of water bodies.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs nearly all the time at most national park and wilderness areas. The average visual range in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution.[1] In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. 64 FR 35715 (July 1, 1999).

B. The CAA Requirements and EPA's Regional Haze Rule

In section 169A(a)(1) of the CAA Amendments of 1977, Congress created a program to protect visibility in the nation's national parks and wilderness areas.[2] This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI) (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling, and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

With the CAA Amendments of 1990, Congress added section 169B to address regional haze issues. EPA promulgated a rule to address regional haze on July 1, 1999, the Regional Haze Rule (RHR) (64 FR 35713). The RHR revised the existing visibility regulations to integrate provisions addressing regional haze impairment and to establish a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. The requirement to submit a regional haze plan revision to the SIP applies to all 50 states, the District of Columbia and the Virgin Islands.[3]

For a more detailed discussion of the CAA and RHR requirements, please see sections II and III of our March 15, 2011 proposal (76 FR 13944). Our evaluation of the California Regional Haze Plan can be found in Section IV of the same proposal.

C. Interstate Transport Pollution and Visibility Requirements

On July 18, 1997, EPA promulgated new NAAQS for 8-hour ozone and for $PM_{2.5}$ (62 FR 38856; 62 FR 38652). Section 110(a)(1) requires each state to submit a plan to address certain requirements for a new or revised NAAQS within three years after promulgation of such standards, or within such shorter time as EPA may prescribe. Section 110(a)(2) lists the elements that such new plan submissions must address, as applicable, including section 110(a)(2)(D)(i), which pertains to the interstate transport of certain emissions.

The ''good neighbor'' provisions in section 110(a)(2)(D)(i) of the CAA require each state to have a SIP that prohibits emissions that adversely affect other states in the ways contemplated in the statute. Section 110(a)(2)(D)(i) contains four distinct requirements related to the impacts of interstate transport. The SIP must contain adequate provisions prohibiting sources in the state from emitting air pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in any other state; (2) interfere with maintenance of the NAAQS in any other state; (3) interfere with provisions to prevent significant deterioration of air quality in any other state; or, (4) interfere with efforts to protect visibility in any other state.

The regional haze program, as reflected in the RHR, recognizes the importance of addressing the long-range transport of pollutants for visibility and encourages states to work together to develop plans to address haze. The regulations explicitly require each state to address its ''share'' of the emission reductions needed to meet the reasonable progress goals for neighboring Class I areas. Working together through a regional planning process, states are required to address an agreed upon share of their contribution to visibility impairment in the Class I areas of their neighbors. 40 CFR 51.308(d)(3)(ii). Given these requirements, we anticipate that regional haze SIPs will contain measures that will achieve these emissions reductions, and that these measures will meet the requirements of section 110(a)(2)(D)(i).

California's 2007 Transport SIP states that the Regional Haze SIP would address interstate regional haze impacts. We interpreted this to mean that California intended for the Regional Haze Plan to address the interstate visibility requirement of section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. Accordingly, our evaluation of the 2007 Transport SIP and whether it meets these CAA section 110(a)(2)(D)(i) visibility requirements relied on our evaluation of relevant information from the CRHP.

For a more detailed discussion of the requirements of CAA section 110(a)(2)(D)(i) and our evaluation of how the 2007 Transport SIP and relevant portions of the CRHP meet these requirements, please see sections II.D and V of our March 15, 2011 proposal (76 FR 13944).

D. Our Proposed Action

On March 15, 2011, EPA proposed to approve: (i) The California Regional

[1] Visual range is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky.

[2] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6000 acres, wilderness areas and national memorial parks exceeding 5000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). In accordance with section 169A of the CAA and after consulting with the Department of Interior, EPA promulgated a list of 156 areas where visibility is identified as an important value. 44 FR 69122 (November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions. 42 U.S.C. 7472(a). Although states and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager.'' 42 U.S.C. 7602(i). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

[3] Albuquerque/Bernalillo County in New Mexico must also submit a regional haze SIP to completely satisfy the requirements of section 110(a)(2)(D) of the CAA for the entire State of New Mexico under the New Mexico Air Quality Control Act (section 74–2–4).

Haze Plan (CRHP) as meeting the relevant requirements of CAA section 169B and the Regional Haze Rule; and (ii) the 2007 Transport SIP and certain portions of the CRHP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS (76 FR 13944).

Regarding our proposed approval of the CRHP, we proposed to find that California met the following Regional Haze Rule requirements: The State established baseline visibility conditions and reasonable progress goals for each of its Class I areas; the State developed a long-term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first ten-year planning period, through 2018; the State adequately addressed the application of Best Available Retrofit Technology to specific stationary sources; the State has an adequate regional haze monitoring strategy; the State provided for consultation and coordination with Federal land managers in producing its regional haze plan; and, the State provided for the regional haze plan's future revisions.

Regarding our proposed approval of California's 2007 Transport SIP, we proposed to find that the following specific elements of the CRHP satisfied the CAA Section 110(a)(2)(D)(i)(II) requirement to prohibit emissions that will interfere with measures to protect visibility in another state for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS: Chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation).

For the portion of today's final action related to the 2007 Transport SIP, we are taking final action only with regard to the section 110(a)(2)(D)(i)(II) requirement that the SIP must contain adequate provisions prohibiting any source or other type of emissions activity in California from emitting pollutants that will interfere with another state's measures to protect visibility. EPA intends to act in separate rulemakings on other portions of California's 2007 Transport SIP that address the remaining elements of CAA section 110(a)(2)(D)(i) for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS.[4]

We proposed to approve the CRHP and the 2007 Transport SIP because we determined that they complied with the relevant CAA requirements. Our proposed action provides more information about the relevant CAA requirements, EPA guidance, the state's submittals, and our review and evaluation of these SIP revisions.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. We received no comments.

III. EPA Action

Under section 110(k)(3) of the CAA, EPA is fully approving the California Regional Haze Plan as satisfying all of the relevant requirements of Section 169B and the Regional Haze Rule. Specifically, we find that California has met the following Regional Haze Rule requirements: The State established baseline visibility conditions and reasonable progress goals for each of its Class I areas; the State developed a long-term strategy with enforceable measures ensuring reasonable progress towards meeting the reasonable progress goals for the first ten-year planning period, through 2018; the State has adequately addressed the application of Best Available Retrofit Technology to specific stationary sources; the State has an adequate regional haze monitoring strategy; the State provided for consultation and coordination with Federal land managers in producing its regional haze plan; and, the State provided for the regional haze plan's future revisions.

In addition, under section 110(k)(3) of the CAA, we are fully approving the 2007 Transport SIP and the following specific elements of the CRHP as satisfying the CAA Section 110(a)(2)(D)(i)(II) requirement to prohibit emissions that will interfere with measures to protect visibility in another state for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS: Chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and, chapter 8 (Consultation).

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

[4] The other elements of CAA section 110(a)(2)(D)(i) require that the California SIP contain adequate provisions prohibiting emission sources within the State from emitting any air pollutant in amounts which will: (a) Contribute significantly to nonattainment of the 1997 8-hour ozone and $PM_{2.5}$ NAAQS in any other State; (b) interfere with maintenance of these standards by any other State; and, (c) interfere with any other State's measures required under Part C of the CAA to prevent significant deterioration of air quality. On March 17, 2011, we proposed to approve California's 2007 Transport SIP as meeting the CAA section 110(a)(2)(D)(I) requirements that the California SIP contain adequate provisions to ensure that emissions from California do not significantly contribute to nonattainment of, or interfere with maintenance of, the 1997 8-hour ozone and 1997 $PM_{2.5}$ standards in other states (76 FR 14616).

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 this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 15, 2011. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action 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, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Visibility, Volatile organic compounds.

Dated: May 9, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(386) and (c)(387) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(386) The following plan was submitted on November 16, 2007, by the Governor's Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(*1*) CARB Resolution 07–28, dated September 27, 2007, adopting the ''2007 State Implementation Plan for the 1997 ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (''2007 State Strategy'').

(*2*) ''Interstate Transport State Implementation Plan (SIP) for the 1997 8-hour Ozone Standard and $PM_{2.5}$ to satisfy the Requirements of Clean Air Act section 110(a)(2)(D)(i) for the State of California (September 21, 2007),'' as modified by Attachment A and submitted as Appendix C to the 2007 State Strategy (''2007 Transport SIP''), at page 5 (''Evaluation of Interference with Other States' Measures Required to Meet Regional Haze and Visibility SIP Requirements'').

(387) The following plan was submitted on March 16, 2009, by the Governor's Designee.

(i) [Reserved].

(ii) Additional materials.

(A) California Air Resources Board (CARB).

(1) CARB Resolution 09–4, dated January 22, 2009, adopting the ''California Regional Haze Plan''.

(2) The ''California Regional Haze Plan'', adopted on January 22, 2009, as amended and supplemented on September 8, 2009 in a ''letter from James N. Goldstene, CARB to Laura Yoshii, United States Environmental Protection Agency'', and as amended and supplemented on June 9, 2010 in a ''letter from James N. Goldstene, CARB to Jared Blumenfeld, United States Environmental Protection Agency''.

* * * * *

■ 3. Section 52.281 is amended by adding paragraph (f) to read as follows:

§ 52.281 Visibility protection.

* * * * *

(f) *Approval.* On March 16, 2009, the California Air Resources Board submitted the ''California Regional Haze Plan'' (''CRHP''). The CRHP, as amended and supplemented on September 8, 2009 and June 9, 2010, meets the requirements of Clean Air Act section 169B and the Regional Haze Rule in 40 CFR 51.308.

■ 4. Part 52 is amended by adding a new § 52.283 to read as follows:

§ 52.283 Interstate Transport.

(a) *Approval.* On November 16, 2007, the California Air Resources Board submitted the ''Interstate Transport State Implementation Plan (SIP) for the 1997 8-hour Ozone Standard and $PM_{2.5}$ to satisfy the Requirements of Clean Air Act section 110(a)(2)(D)(i) for the State of California (September 21, 2007)'' (''2007 Transport SIP''). The 2007 Transport SIP and the additional plan elements listed below meet the following specific requirements of Clean Air Act section 110(a)(2)(D)(i) for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS (''1997 standards'').

(1) The requirements of section 110(a)(2)(D)(i)(II) regarding interference with other states' measures to protect visibility for the 1997 standards are met by chapter 3 (Emissions Inventory), chapter 4 (California 2018 Progress Strategy), and chapter 8 (Consultation) of the ''California Regional Haze Plan,'' adopted January 22, 2009.

(2) [Reserved]

(b) [Reserved]

[FR Doc. 2011–14479 Filed 6–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–8183]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: *Effective Dates:* The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

FOR FURTHER INFORMATION CONTACT: If you want to determine whether a particular community was suspended on the suspension date or for further information, contact David Stearrett, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2953.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Region I				
Maine:				
Albion, Town of, Kennebec County	230231	December 10, 1975, Emerg; September 27, 1985, Reg; June 16, 2011, Susp.	June 16, 2011	June 16, 2011.
Augusta, City of, Kennebec County	230067	May 16, 1974, Emerg; April 1, 1981, Reg; June 16, 2011, Susp.	do *	Do.
Belgrade, Town of, Kennebec County	230232	December 10, 1975, Emerg; January 16, 1987, Reg; June 16, 2011, Susp.	do	Do.
Chelsea, Town of, Kennebec County	230234	October 1, 1975, Emerg; June 4, 1980, Reg; June 16, 2011, Susp.	do	Do.
China, Town of, Kennebec County	230235	August 6, 1975, Emerg; June 5, 1989, Reg; June 16, 2011, Susp.	do	Do.
Clinton, Town of, Kennebec County	230236	April 22, 1976, Emerg; May 3, 1990, Reg; June 16, 2011, Susp.	do	Do.
Farmingdale, Town of, Kennebec County.	230164	April 17, 1975, Emerg; September 30, 1980, Reg; June 16, 2011, Susp.	do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Fayette, Town of, Kennebec County	230237	February 3, 2000, Emerg; October 1, 2002, Reg; June 16, 2011, Susp.	.....do	Do.
Gardiner, City of, Kennebec County	230068	February 27, 1975, Emerg; May 15, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Hallowell, City of, Kennebec County	230069	January 13, 1975, Emerg; November 15, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Litchfield, Town of, Kennebec County	230238	February 18, 1976, Emerg; November 19, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Manchester, Town of, Kennebec County.	230239	May 30, 1975, Emerg; October 15, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Monmouth, Town of, Kennebec County	230240	August 11, 1975, Emerg; September 3, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Mount Vernon, Town of, Kennebec County.	230241	February 9, 1976, Emerg; August 19, 1985, Reg; June 16, 2011, Susp.	.....do	Do.
Randolph, Town of, Kennebec County	230244	August 5, 1975, Emerg; September 5, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Readfield, Town of, Kennebec County	230245	October 24, 1975, Emerg; December 16, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Rome, Town of, Kennebec County	230246	April 16, 1976, Emerg; May 17, 1988, Reg; June 16, 2011, Susp.	.....do	Do.
Unity, Township of, Kennebec County	230602	April 25, 1975, Emerg; April 30, 1984, Reg; June 16, 2011, Susp.	.....do	Do.
Vassalboro, Town of, Kennebec County	230248	July 24, 2005, Emerg; August 1, 2006, Reg; June 16, 2011, Susp.	.....do	Do.
Waterville, City of, Kennebec County	230070	November 25, 1974, Emerg; February 17, 1988, Reg; June 16, 2011, Susp.	.....do	Do.
Wayne, Town of, Kennebec County	230188	May 9, 1975, Emerg; April 3, 1989, Reg; June 16, 2011, Susp.	.....do	Do.
Windsor, Town of, Kennebec County	230251	January 29, 1976, Emerg; February 4, 1987, Reg; June 16, 2011, Susp.	.....do	Do.
Winthrop, Town of, Kennebec County	230072	June 23, 1975, Emerg; August 15, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Region III				
Virginia:				
Alexandria, City of, Independent City.	515519	May 8, 1970, Emerg; May 8, 1970, Reg; June 16, 2011, Susp.	.....do	Do.
Dinwiddie County, Unincorporated Areas.	510187	January 16, 1974, Emerg; January 17, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Hopewell, City of, Independent City	510080	May 27, 1975, Emerg; September 5, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Region IV				
Georgia:				
Hiawassee, City of, Towns County	130447	September 15, 1992, Emerg; April 1, 1993, Reg; June 16, 2011, Susp.	.....do	Do.
Towns County, Unincorporated Areas	130253	January 7, 1992, Emerg; July 6, 1998, Reg; June 16, 2011, Susp.	.....do	Do.
Young Harris, City of, Towns County	130174	April 29, 1976, Emerg; May 4, 1988, Reg; June 16, 2011, Susp.	.....do	Do.
Kentucky:				
Lawrence County, Unincorporated Areas.	210258	April 18, 1985, Emerg; April 18, 1985, Reg; June 16, 2011, Susp.	.....do	Do.
Louisa, City of, Lawrence County	210241	August 8, 1975, Emerg; November 19, 1980, Reg; June 16, 2011, Susp.	.....do	Do.
Mississippi: Wiggins, City of, Stone County	280401	June 27, 2006, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
South Carolina:				
Bennettsville, City of, Marlboro County	450147	July 17, 1974, Emerg; August 19, 1987, Reg; June 16, 2011, Susp.	.....do	Do.
Kershaw, Town of, Lancaster County	450119	June 23, 1975, Emerg; September 30, 1976, Reg; June 16, 2011, Susp.	.....do	Do.
Lancaster, City of, Lancaster County	450121	December 7, 1973, Emerg; July 5, 1982, Reg; June 16, 2011, Susp.	.....do	Do.
Lancaster County, Unincorporated Areas.	450120	July 3, 1975, Emerg; January 6, 1983, Reg; June 16, 2011, Susp.	.....do	Do.
Marlboro County, Unincorporated Areas	450146	N/A, Emerg; August 11, 1997, Reg; June 16, 2011, Susp.	.....do	Do.
Region V				
Illinois:				
Blue Mound, Village of, Macon County	170946	November 1, 1979, Emerg; July 18, 1985, Reg; June 16, 2011, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in SFHAs
Christian County, Unincorporated Areas	170926	May 27, 1993, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
De Land, Village of, Piatt County	170547	November 20, 1975, Emerg; September 4, 1987, Reg; June 16, 2011, Susp.	.....do	Do.
Decatur, City of, Macon County	170429	July 29, 1974, Emerg; August 1, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Edinburg, Village of, Christian County ..	175422	July 3, 2003, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
Forsyth, Village of, Macon County	171017	June 24, 1986, Emerg; January 6, 1988, Reg; June 16, 2011, Susp.	.....do	Do.
Kincaid, Village of, Christian County	170858	April 7, 1976, Emerg; April 1, 1993, Reg; June 16, 2011, Susp.	.....do	Do.
Long Creek, Village of, Macon County	171016	N/A, Emerg; December 16, 2002, Reg; June 16, 2011, Susp.	.....do	Do.
Mansfield, Village of, Piatt County	170549	May 11, 1995, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
Monticello, City of, Piatt County	170550	June 6, 1975, Emerg; May 15, 1991, Reg; June 16, 2011, Susp.	.....do	Do.
Piatt County, Unincorporated Areas	170542	August 8, 1977, Emerg; September 1, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Stonington, Village of, Christian County	170037	May 7, 1975, Emerg; September 28, 1979, Reg; June 16, 2011, Susp.	.....do	Do.
Region VII				
Iowa:				
Beacon, City of, Mahaska County	190452	November 12, 1997, Emerg; March 1, 2001, Reg; June 16, 2011, Susp.	.....do	Do.
Mahaska County, Unincorporated Areas	190888	March 5, 1994, Emerg; March 1, 1997, Reg; June 16, 2011, Susp.	.....do	Do.
Oskaloosa, City of, Mahaska County	190638	N/A, Emerg; December 21, 2010, Reg; June 16, 2011, Susp.	.....do	Do.
University Park, City of, Mahaska County.	190671	January 2, 2008, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
Missouri:				
Bonne Terre, City of, St. Francois County.	290321	June 20, 1975, Emerg; August 19, 1985, Reg; June 16, 2011, Susp.	.....do	Do.
Camden County, Unincorporated Areas	290789	June 18, 1993, Emerg; May 1, 1994, Reg; June 16, 2011, Susp.	.....do	Do.
Desloge, City of, St. Francois County ...	290748	December 19, 1977, Emerg; August 24, 1984, Reg; June 16, 2011, Susp.	.....do	Do.
Farmington, City of, St. Francois County.	290323	June 25, 1974, Emerg; January 16, 1981, Reg; June 16, 2011, Susp.	.....do	Do.
Greenville, City of, Wayne County	290450	November 19, 1975, Emerg; August 1, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Iron Mountain Lake, City of, St. Francois County.	290897	October 13, 1988, Emerg; November 7, 2001, Reg; June 16, 2011, Susp.	.....do	Do.
Leadwood, City of, St. Francois County	290706	November 18, 1977, Emerg; December 21, 1984, Reg; June 16, 2011, Susp.	.....do	Do.
Macks Creek, Village of, Camden County.	290054	August 25, 1975, Emerg; September 4, 1985, Reg; June 16, 2011, Susp.	.....do	Do.
Osage Beach, City of, Camden and Miller Counties.	290671	April 11, 2000, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
Park Hills, City of, St. Francois County	290920	N/A, Emerg; March 22, 1995, Reg; June 16, 2011, Susp.	.....do	Do.
Nebraska:				
Crawford, City of, Dawes County	310056	June 27, 1975, Emerg; August 1, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Dawes County, Unincorporated Areas ..	310055	June 26, 2007, Emerg; June 16, 2011, Reg; June 16, 2011, Susp.	.....do	Do.
Region VIII				
Montana: Ennis, Town of, Madison County	300044	July 16, 1976, Emerg; June 1, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Wyoming:				
Albany County, Unincorporated Areas ..	560001	June 21, 1984, Emerg; October 1, 1986, Reg; June 16, 2011, Susp.	.....do	Do.
Laramie, City of, Albany County	560002	May 28, 1976, Emerg; July 16, 1979, Reg; June 16, 2011, Susp.	.....do	Do.

*do = Ditto.
Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: May 24, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation.

[FR Doc. 2011–14606 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 76, No. 114
Tuesday, June 14, 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 HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2011–0033]

Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/National Protection and Programs Directorate—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Homeland Security is giving concurrent notice of a newly established system of records pursuant to the Privacy Act of 1974 for the Department of Homeland Security/National Protection and Programs Directorate—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records and this proposed rulemaking. In this proposed rulemaking, the Department proposes to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

DATES: Comments must be received on or before July 14, 2011.

ADDRESSES: You may submit comments, identified by docket number DHS–2011–0033, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will 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.*

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received will 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.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/National Protection and Programs Directorate (NPPD) proposes to establish a DHS system of records titled, ''DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records.''

On October 4, 2006, the President signed the DHS Appropriations Act of 2007 (the Act), Public Law 109–295. Section 550 of the Act (Section 550) provides DHS with the authority to regulate the security of high-risk chemical facilities. DHS has promulgated regulations implementing Section 550, the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR part 27.

Section 550 requires that DHS establish Risk Based Performance Standards (RBPS) as part of CFATS. RBPS–12 (6 CFR 27.230(a)(12)(iv)) requires that regulated chemical facilities implement ''measures designed to identify people with terrorist ties.'' The ability to identify individuals with terrorist ties is an inherently governmental function and requires the use of information held in government-maintained databases, which are unavailable to high-risk chemical facilities. Therefore, DHS is implementing the CFATS Personnel Surety Program, which will allow chemical facilities to comply with RBPS–12 by implementing ''measures designed to identify people with terrorist ties.''

The CFATS Personnel Surety Program will work with the DHS Transportation Security Administration (TSA) to identify individuals who have terrorist ties by vetting information submitted by each high-risk chemical facility against the Terrorist Screening Database (TSDB). The TSDB is the Federal government's consolidated and integrated terrorist watchlist of known and suspected terrorists, maintained by the Department of Justice (DOJ) Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC). For more information on the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

High-risk chemical facilities or their designees will submit the information of: (1) Facility personnel who have or are seeking access, either unescorted or otherwise, to restricted areas or critical assets; and (2) unescorted visitors who have or are seeking access to restricted areas or critical assets. These persons, about whom high-risk chemical facilities and facilities' designees will submit information to DHS, are referred to in this notice as ''affected individuals.'' Individual high-risk facilities may classify particular contractors or categories of contractors either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices.

Information will be submitted to DHS/NPPD through the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS. The high-risk chemical facility or its designees will submit the information of affected individuals to DHS through CSAT. The submitters of this information (''Submitters'') for each high-risk chemical facility will also affirm, to the best of their ability, that the information is: (1) True, correct, and complete; and (2) collected and submitted in compliance with the facility's Site Security Plan (SSP) or

Alternative Security Program (ASP), as reviewed and authorized and/or approved in accordance with 6 CFR 27.245. The Submitter(s) of each high-risk chemical facility will also affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974, 5 U.S.C. § 552a, has been given to affected individuals before their information is submitted to DHS.

DHS will send a verification of receipt to the Submitter(s) of each high-risk chemical facility when a high-risk chemical facility: (1) Submits information about an affected individual for the first time; (2) submits additional, updated, or corrected information about an affected individual; and/or (3) notifies DHS that an affected individual no longer has or is seeking access to that facility's restricted areas or critical assets.

Upon receipt of each affected individual's information in CSAT, DHS/NPPD will send a copy of the information to DHS/TSA. Within DHS/TSA, the Office of Transportation Threat Assessment and Credentialing (TTAC) conducts vetting against the TSDB for several DHS programs. DHS/TSA/TTAC will compare the information of affected individuals collected by DHS (via CSAT) to information in the TSDB. DHS/TSA/TTAC will forward potential matches to the DOJ/FBI/TSC, which will make a final determination of whether an individual's information is identified as a match to a record in the TSDB.

In certain instances, DHS/NPPD may contact a high-risk chemical facility to request additional information (*e.g.,* visa information) pertaining to particular individuals in order to clarify suspected data errors or resolve potential matches (*e.g.,* in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an individual's information has been confirmed as a match to a TSDB record.

DHS/NPPD may also conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program. Such reviews may be conducted on random samples of affected individuals. To assist with this activity, DHS/NPPD may request information pertaining to affected individuals, previously provided to DHS/NPPD by high-risk chemical facilities, in order to confirm the accuracy of that information.

Consistent with the Department's information sharing mission, information stored in the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records may be shared with other DHS components, as well as appropriate Federal, state, local, Tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States government collects, maintains, uses, and disseminates personally identifiable information. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Individuals may request their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting of the type and character of each system of records that the agency maintains, and the routine uses made of records in each system. These requirements exist in order to make agency recordkeeping practices transparent, to notify individuals regarding the uses to which personally identifiable information is put, and to assist individuals in finding records containing information about them.

The Privacy Act allows government agencies to exempt certain records from the access and amendment provisions of the Privacy Act. If an agency claims exemptions from Privacy Act requirements, however, it must issue a Notice of Proposed Rulemaking (NPRM), followed by a Final Rulemaking, to make clear to the public the reasons for claiming particular exemptions.

DHS is claiming exemptions from certain requirements of the Privacy Act for the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records. Some information in the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records may contain records or information recompiled from or created from information contained in the DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007). Therefore, some information contained in the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records relates to national security, law enforcement, and intelligence. These exemptions are needed to protect this information from disclosure to subjects or others related to these activities. Specifically, the exemptions are required to preclude subjects of these activities from frustrating these activities; to avoid disclosure of activity techniques; to protect the identities and physical safety of confidential informants and law enforcement personnel; to ensure the Department's ability to obtain information from third parties and other sources; to protect the privacy of third parties; to safeguard classified information; and to safeguard records. Disclosure of information to the subject of an inquiry could also permit the subject to avoid detection or apprehension.

The exemptions proposed here are standard law enforcement and national security exemptions exercised by a large number of Federal law enforcement and intelligence agencies. In appropriate circumstances, where compliance would not appear to interfere with or adversely affect the law enforcement purposes of this system and the overall law enforcement process, the applicable exemptions may be waived on a case by case basis.

A system of records notice for the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records is also published in this issue of the **Federal Register**.

List of Subjects in 6 CFR Part 5

Freedom of information; Privacy.

For the reasons stated in the preamble, DHS proposes to amend Chapter I of Title 6, Code of Federal Regulations, as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

1. The authority citation for Part 5 continues to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301. Subpart A also issued under 5 U.S.C. 552. Subpart B also issued under 5 U.S.C. 552a.

2. Add at the end of Appendix C to Part 5, the following new paragraph ''<54>'':

Appendix C to Part 5—DHS Systems of Records Exempt From the Privacy Act

* * * * *

<54>. The DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records consists of electronic and paper records and will be used by DHS. The DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records is a repository of information held by DHS in connection with its several and varied missions and functions including, but not limited to, the enforcement of civil and criminal laws; investigations, inquiries, and proceedings there under; national security and intelligence activities. The DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records contains information that is collected by, on behalf of, in support of, or in cooperation with DHS and its components and may contain personally identifiable information collected by other Federal, state, local, Tribal, foreign, or international government agencies.

The Secretary of Homeland Security is publishing a notice of proposed rulemaking, proposing to exempt this system from the following provisions of the Privacy Act, subject to the limitation set forth therein: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). These exemptions are made pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

In addition to records under the control of DHS, the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records may include records originating from systems of records of other law enforcement and intelligence agencies, which may be exempt from certain provisions of the Privacy Act. DHS does not, however, assert exemption from any provisions of the Privacy Act with respect to information submitted by high-risk chemical facilities.

To the extent the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records contains records originating from other systems of records, DHS will rely on the exemptions claimed for those records in the originating systems of records. Exemptions from these particular subsections are justified, on a case-by-case basis to be determined at the time a request is made, for the following reasons:

(a) From subsection (c)(3) (Accounting for Disclosures) because release of the accounting of disclosures could alert the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest, on the part of DHS as well as the recipient agency. Disclosure of the accounting would therefore present a serious impediment to law enforcement efforts and/or efforts to preserve national security. Disclosure of the accounting would also permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension, which would undermine the entire investigative process.

(b) From subsection (d) (Access to Records) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation to the existence of that investigation and reveal investigative interest on the part of DHS or another agency. Access to the records could permit the individual who is the subject of a record to impede the investigation, to tamper with witnesses or evidence, and to avoid detection or apprehension. Amendment of the records could interfere with ongoing investigations and law enforcement activities and would impose an unreasonable administrative burden by requiring investigations to be continually reinvestigated. In addition, permitting access and amendment to such information could disclose security-sensitive information that could be detrimental to homeland security.

(c) From subsection (e)(1) (Relevancy and Necessity of Information) because in the course of investigations into potential violations of Federal law, the accuracy of information obtained or introduced occasionally may be unclear, or the information may not be strictly relevant or necessary to a specific investigation. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

(d) From subsections (e)(4)(G), (e)(4)(H), and (e)(4)(I) (Agency Requirements) and (f) (Agency Rules), because portions of this system are exempt from the individual access provisions of subsection (d) for the reasons noted above, and therefore DHS is not required to establish requirements, rules, or procedures with respect to such access. Providing notice to individuals with respect to existence of records pertaining to them in the system of records or otherwise setting up procedures pursuant to which individuals may access and view records pertaining to themselves in the system would undermine investigative efforts and reveal the identities of witnesses, and potential witnesses, and confidential informants.

Dated: June 6, 2011.

Mary Ellen Callahan

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–14386 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 987

[Doc. No. AMS–FV–10–0025; FV10–987–1 PR]

Domestic Dates Produced or Packed in Riverside County, CA; Proposed Amendments to Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: Five amendments to Marketing Agreement and Order No.987 which regulates the handling of domestic dates produced or packed in Riverside County, California, were proposed by the California Date Administrative Committee (CDAC or committee), which is responsible for local administration of the order. These proposed amendments are intended to improve administration of and compliance with the order and reflect current industry practices.

In addition to the committee's proposals, the Agricultural Marketing Service (AMS) proposes to further amend the order by providing for a continuance referendum every six years, and by establishing term limits of up to six consecutive years for committee members. These proposals would allow producers to indicate continued support for the order and provide all interested industry members the opportunity to serve on the committee.

DATES: Comments must be received by July 14, 2011.

ADDRESSES: Written comments should be submitted to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* All comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.* Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet at the address provided above.

To the extent practicable, all documents filed with the Docket Clerk should also be submitted electronically to Laurel May at the e-mail address noted for her in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Laurel May, Senior Marketing Specialist, or Kathleen Finn, Rulemaking Team Program Manager, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Laurel.May@ams.usda.gov* or *Kathy.Finn@ams.usda.gov.*

Small businesses may request information on complying with this regulation by contacting Antoinette

Carter, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Antoinette.Carter@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement and Order No. 987, both as amended (7 CFR part 987), regulating the handling of domestic dates produced or packed in Riverside County, California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900) authorize amendment of the order through this informal rulemaking action. A producer referendum will be held in the future to determine support for the proposed order amendments, if the amendments are deemed appropriate.

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 1504 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246) made changes to section 18c(17) of the Act, which in turn required the addition of supplemental rules of practice to 7 CFR part 900 (73 FR 49307; August, 21, 2008). The additional supplemental rules of practice authorize the use of informal rulemaking (5 U.S.C. 553) to amend Federal fruit, vegetable, and nut marketing agreements and orders if certain criteria are met.

AMS has considered the nature and complexity of the proposed amendments, the potential regulatory and economic impacts on affected entities, and other relevant matters, and has determined that amending the order as proposed by the committee could appropriately be accomplished through informal rulemaking. AMS will analyze any comments received on the amendments proposed in this rule, and if appropriate, AMS will conduct a producer referendum. If appropriate, a final rule will then be issued to effectuate the amendments favored by producers participating in the referendum.

The proposed amendments were recommended by the committee following deliberations at public meetings on October 30, 2008; October 29, 2009; and February 25, 2010. The proposed amendments were first submitted to AMS on May 29, 2009. After further discussions with AMS, the committee submitted revised proposals to AMS on March 2, 2010.

The committee's proposed amendments would: (1) Authorize the committee to recommend regulatory exemptions for certain date varieties if market conditions warrant such exemption. Currently the order only provides for exemptions for handlers who sell dates directly to consumers in limited market outlets; (2) Increase the terms of office for committee members and alternates from two to three years; (3) Authorize the committee to conduct business by means of telephone or video conference technologies. Currently all committee meetings must be assembled; (4) Authorize the committee to collect interest charges and late fees on delinquent assessment payments. Currently, the order does not provide authority for the collection of interest and late fees; and (5) Authorize the committee to build and maintain an operating reserve not to exceed the average of one year's average expenses. Currently, the committee is authorized to maintain an operating reserve not to exceed 50 percent of an average year's expenses.

AMS further proposes to amend the order by: (1) Requiring that a producer referendum be conducted every six years to determine continued support for the order; and (2) establishing term limits of no longer than two consecutive terms of office or six consecutive years for committee members and alternates. Finally, AMS proposes to make conforming changes to the order as may be necessary to conform to any amendment to the order that may result from this rulemaking action.

Proposal Number 1—Regulatory Exemptions

Section 987.5 of the order defines the date varieties that are regulated under the order. Regulated varieties are subject to the minimum grade, size, inspection, certification, volume control, interhandler transfer, container, reporting, and assessment requirements authorized under §§ 987.39 through 987.51, §§ 987.61 through 987.68, and § 987.72 of the order.

Currently, § 987.5 lists four date varieties for regulation under the order, including the Deglet Noor, Zahidi, Halawy, and Khadrawy varieties. At the time the order was established, these four varieties were produced or handled in Riverside County in sufficient quantities to warrant regulation. At times, production of some varieties may decline to the point that the committee believes that the cost to handlers of inspecting and reporting those varieties outweighs the benefits of doing so. For instance, the committee reports that the cost of regulating two date varieties currently outweighs the benefit of doing so as very little assessment revenue is generated by the handling of those two varieties. In such cases, the committee believes it should have the authority to recommend regulatory exemption of those varieties until such time as it is again appropriate to regulate them.

To address this issue, the committee proposed amending the order by temporarily suspending the varieties currently produced in minimal quantities from inclusion in § 987.5—**DATES**. However, AMS believes that the committee would have greater flexibility if it were authorized to recommend regulatory exemptions for varieties produced, with the approval of the Secretary, through the informal rulemaking process. In this way, any future changes in production levels or other market considerations for any variety could be addressed through informal rulemaking.

Section 987.52 authorizes the committee to exempt handlers of dates for sale in certain market outlets from regulation if those sales are unlikely to interfere with the objectives of the order. However, the section does not authorize the exemption of dates sold into regular markets by variety. Such authority would allow the committee to recommend, subject to approval of the Secretary, that certain varieties be exempted from the order's regulations through informal rulemaking. Such authority should be broad enough to include exemptions for a variety of

reasons, including periods of minimal production. This flexibility would allow the committee to respond to changes in the production and marketing environment in a timely manner. As production and market conditions change, the committee could recommend lifting the regulatory exemptions, as appropriate.

For example, two varieties regulated under the order are currently being produced in very small quantities. New date garden plantings of those varieties are still immature, and have not reached full production. Under the proposed amendment, the committee could recommend, through the informal rulemaking process, that those two varieties be exempted from the order's regulations. When the trees of each variety mature and are producing in sufficient quantities to warrant regulation, the committee could recommend that the variety-specific exemptions be removed.

For the reasons stated above, it is proposed that § 987.52, Exemption, be amended by designating the current text of that section as paragraph (a) and adding a new paragraph (b) providing authority for the committee to recommend that any variety may be exempt from regulations established pursuant to §§ 987.39 through 987.50, §§ 987.61 through 987.68, and § 987.72.

Proposal Number 2—Terms of Office

Section 987.23 of the order specifies that the terms of office for committee members and alternates are two years, beginning on August 1. Section 987.24 of the order specifies that nominations for committee positions are held by June 15, every other year. The committee proposed amending the order to extend member and alternate terms of office from two to three years.

The terms of office for another California date industry program, the California Date Commission (commission), are three years. Some committee members may also serve on the commission. Nominations for the two programs occasionally, but not always, take place within a few weeks of each other. Because nominations coincide in some years and don't coincide in others, the committee believes that voters can become confused about whether or not they have submitted ballots, and thus are less likely to participate in the committee's nomination process. The committee believes that extending terms of office to three years and synchronizing nominations with those of the commission would improve the nomination process and encourage greater participation in committee nominations.

Additionally, the number of date producers and handlers in the production area has declined over time, making it increasingly difficult to find new candidates to serve as members and alternates on the nine-member committee every other year. The committee believes that extending the terms of office for one year would give the industry more time to identify and recruit potential new committee members between nomination periods.

The current committee was nominated in 2010 and is expected to serve until 2012. If this amendment is adopted, terms of office of the current committee members and alternates would be extended until 2014, or whenever a new committee is selected by the Secretary. Thereafter, the three-year terms of office would commence with the new committee selected in 2014. This would coincide with the commission's nomination cycle.

For the reasons stated above, it is proposed that § 987.23 of the order be amended to change committee member and alternate terms of office from two to three years. The section should also specify that the terms of office of members and alternates serving at the time the amendment is effectuated would end on July 31, 2014. Further, Section 987.24 should be amended to specify that nominations for committee positions are held by June 15 of every third year rather than every other year.

Proposal Number 3—Committee Meetings

Section 987.31 of the order specifies procedures for conducting committee business. Quorum requirements are defined, and the minimum voting requirements for various matters are specified. The section specifies that votes cast at assembled meetings shall be cast in person. The section also authorizes the committee to vote on any proposition by mail, telephone, or telegram after all members and alternates acting as members have received identical explanations about the proposition. Telephone votes must be confirmed in writing within two weeks. Actions approved by mail, telephone, or telegram voting must be unanimous to be valid.

Currently, the order does not authorize the committee to conduct business meetings by telephone or other means of modern communication technology, such as video conference. The committee proposed amending the order to authorize the use of such technology in certain situations.

The use of telephone conference and video conference capability has become standard in the date industry, as well as in other marketing order programs. Use of such technology allows producers and handlers to address urgent committee business with minimal disruption to their individual business responsibilities. Telephone and video conferences also bolster participation by other interested parties who would otherwise be unable to participate in industry meetings due to the constraints of time and distance.

The committee believes that the use of telephone and video conference technology would be appropriate in certain situations, such as when the matters to be discussed are minor, or when emergencies demand immediate decisions by the committee. The committee also believes that some business matters should be addressed at assembled meetings, and that alternate meeting formats would not be appropriate for all situations. The committee proposed that the chairperson should have the discretion to determine the appropriate format for any committee meeting.

There could be some situations in which the chairperson determines that members may participate in assembled meetings by telephone or other means of communication. Although the member's alternate may be present at the same assembled meeting, the committee believes that the member should retain the right to vote on any issue that comes before the committee in that meeting, even if he or she is participating via telephone or videoconference. Therefore, the requirement that votes at assembled meetings shall be cast in person should be removed. Nevertheless, the committee believes that votes cast by telephone should continue to be confirmed in writing within two weeks of the meeting. Finally, because telegrams are no longer in standard use, authority to vote by telegram should be removed.

For the reasons stated above, it is proposed that § 987.31, Procedure, be amended by: Revising paragraph (d) to provide for participation in assembled committee meetings as well as telephone, video conference, or other types of meetings; providing the committee chairperson with discretion to determine the appropriate meeting format and whether members may participate in assembled meetings by telephone or other means; clarifying that members attending assembled meetings by alternate means of communication retain the same voting privileges they would otherwise have; and removing the requirement that votes at assembled

meetings shall be cast in person. Paragraph (e) of § 987.31 would be amended by removing the words ''or telegram.''

Proposal Number 4—Interest and Late Payment Charges

Section 987.72 requires date handlers to pay the committee assessments upon merchantable and utility dates they have certified as such. Funds to administer the order are derived from such assessments. The committee, with USDA approval, formulates annual budgets of expenses and recommends appropriate assessment rates. The committee's budgeted expenditures include those for general administration of the program, as well as the cost of promotional programs and marketing and media consultants.

Currently, the order does not authorize the committee to charge interest or late payment charges for delinquent assessment payments. The committee believes that adding such authority would provide greater incentive for handlers to make assessment payments on time. This in turn would help ensure that the committee is able to meet its financial obligations and continue to fund its programs on a continuing basis.

Charging interest and late payment charges on unpaid financial obligations is commonplace in the business world, and implementation of such charges would bring the committee's financial operations in line with standard business practices. Such charges would remove any financial advantage for those who do not pay on time while they benefit from committee programs, creating a more level playing field for the industry.

The committee recommended amending the order to authorize the collection of interest and late payment charges for delinquent payments. Such authority would allow the committee to establish, through informal rulemaking, parameters for implementation, including timeframes and appropriate interest and late payment charges that would be imposed if necessary. This authority is intended to strengthen compliance with the order's assessment requirements.

For the reasons stated above, it is proposed that paragraphs (b) through (d) of § 987.72 be redesignated paragraphs (c) through (e), respectively, and that a new paragraph (b) be added to the order to specify that any assessment not paid by a handler within a period of time specified by the committee may be subject to an interest or late payment charge, or both. The new paragraph would further specify that the period of time, interest rate, and late payment charge shall be as recommended by the committee and approved by the Secretary.

Proposal Number 5—Operating Reserve

Paragraph (c) of § 987.72 currently authorizes the committee to establish and maintain a monetary operating reserve in an amount not to exceed 50 percent of an average year's expenses. The average year's expenses are calculated using the actual expenses of the five most recent crop years. Should the existing reserve ever exceed the recalculated average, there is no requirement to lower the reserve to meet that average. Funds in the reserve are available for use by the committee to meet its financial obligations in connection with administration of the order and its programs. Annual budgets and assessment rates are revised as appropriate in an effort to maintain the authorized operating reserve balance.

The committee occasionally uses reserve funds when the assessment revenues they have collected are not sufficient to meet their budgeted expenses. This may happen when the date crop is smaller than expected, which reduces the total amount of assessments paid by handlers. In other instances, the committee may desire later in the year to take advantage of a promotional opportunity for which it had not budgeted at the beginning of the year. With the approval of the Secretary, the committee could revise their budget to include the promotional program and use reserve funds to cover its costs without increasing the current assessment rate.

In crop years with unexpectedly high production, the approved assessment rate may generate excess funds. Under the order's current provisions, the committee is only authorized to retain an amount not to exceed 50 percent of an average year's expenses. Any excess funds must be returned to handlers or applied as a credit against their accounts for the upcoming year.

The committee proposed raising the operating reserve limit from 50 percent of an average year's expenses to an amount not to exceed one year's average expenses. This would allow the committee to retain more surplus assessment revenues they may collect. A larger operating reserve would strengthen the committee's continuity and confidence in managing committee business. A larger reserve would provide sufficient funds to meet the committee's budgeted financial obligations, including the maintenance of strategic marketing programs, in short crop years as well as provide the flexibility to respond to unexpected opportunities. The committee could recommend annual assessment rates. Over a number of years, the reserve could gradually increase until the balance approximates one year's average expenses, as calculated using the five most recent years' actual expenses.

For the reasons stated above, it is proposed that paragraph (c) of § 987.72, which would be redesignated paragraph (d) as described under amendment Proposal Number 4 above, be further amended to authorize the committee to build and maintain an operating monetary reserve not to exceed one year's average expenses, based upon the actual expenses of the five most recent crop years.

Proposal Number 6—Continuance Referenda

AMS proposes to amend the order by adding a provision for continuance referenda every six years. Provision for periodic continuance referenda would offer producers the opportunity to indicate ongoing support for the order and its programs. Experience has shown that marketing order programs need significant industry support to operate effectively. Continuance of the date order would require the favorable vote of at least two-thirds of those voting, or of those representing at least two-thirds of the production volume represented in the referendum. This is the same support that is typically required for issuance or amendment of an order.

The order was last amended on February 1, 1978 (43 FR 4253). Since that time, USDA has recommended that producers of commodities regulated under Federal marketing orders be offered the opportunity to participate in periodic continuance referenda. The California date marketing order does not currently provide for continuance referenda. Therefore, it is recommended that § 987.82—Effective time, suspension, or termination, be amended by redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3) to provide that a continuance referendum shall be conducted six years after the amendment becomes effective and every six years thereafter. The new paragraph (b)(3) of § 987.82 should further specify that continuation of the order would require the approval of two-thirds of the producers participating in the referendum, or of voters representing two-thirds of the date production represented in the referendum.

In paragraph (b)(2) of § 987.82, the word ''growers,'' which appears in the heading and in the text of that paragraph, should be replaced with the

word ''producers'' to conform with the definition provided in § 987.7 of the order; and the word ''he,'' in reference to the Secretary, should be replaced by the words ''he or she'' to modernize the section.

Proposal Number 7—Term Limits

AMS proposes to amend the order by establishing term limits on the number of consecutive terms a person may serve on the committee.

Currently, the term of office for each member and alternate member of the committee is two years. Committee members and alternates continue to serve until their successors have been selected by the Secretary and have qualified. The order does not specify any term limits for members or alternates. Members and alternates may be selected to serve consecutive terms in those positions, as long as they continue to be eligible and willing to do so.

As explained under Proposal number 2 above, the committee has proposed to amend the order to provide for three-year terms of office. AMS's is proposing to further amend the order to specify that members may serve up to two consecutive three-year terms, not to exceed six consecutive years. This proposal for a limitation on tenure would not apply to alternates. Once a member has served on the committee for two consecutive terms, or six years, the member would be required to step down for at least one year before being eligible to serve as a member again. The member could serve as an alternate during that time.

AMS's experience with similar marketing programs is that establishing tenure limits is a means to increase industry participation on the committee and in its programs. By inviting potential new members to serve, small and large entities who have not been actively involved previously may be encouraged to take part in the order's activities and gain committee experience.

For the reasons stated above, it is proposed that § 987.23 be further amended by specifying that members may serve up to two consecutive three-year terms, not to exceed six consecutive years as members. There would be no such limitation for alternates. After serving for six consecutive years, members would be required to step down for at least one year before being eligible to serve again. If the order is amended to allow three-year terms of office, members who were appointed in 2010 and continued to serve until 2014 would be allowed to serve one additional three-year term of office before being required to step down. Any other service prior to the order amendment would not count toward the term limit.

Conforming Changes to Administrative Rules and Regulations

Adoption of two of the proposed amendments to the order would require that conforming changes be made to § 987.124 of the order's administrative rules and regulations. These changes would not be voted upon by producers in the referendum, but would be made as conforming changes if Proposal Number 2, to make terms of office three years long, and/or Proposal Number 7, to add term limits, are approved by voters participating in the referendum.

Currently, paragraph (a) of § 987.124 specifies that nominations materials are provided to producers and producer-handlers no later than June 15 of each even numbered year. If the order is amended to provide for three year terms of office as explained in Proposal number 2 above, nominations would be conducted every three years, rather than every two years. Therefore, § 987.124(a) should be changed to specify that ballot materials are provided to producers and producer handlers no later than June 15 of every third year.

Paragraph (a)(1) of § 987.124 currently specifies that the ballots should contain the list of incumbents who are willing to continue to serve on the committee. As explained above, some incumbents may no longer be eligible to serve in their positions if the proposal to add term limits is adopted. Therefore, § 987.124(a)(1) should be revised to clarify that the names of incumbents who are both willing and eligible to continue serving should be listed on the ballots.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 85 producers of dates in the production area and 8 handlers subject to regulation under the marketing order. The Small Business Administration (13 CFR 121.201) defines small agricultural producers as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000.

According to the National Agricultural Statistics Service (NASS), the 2010 crop yield was approximately 7,080 pounds, or 3.54 tons, of dates per acre. NASS estimates that the 2010 grower price was approximately $0.585 per pound, or $1,170 per ton. Thus, the value of date production in 2010 averaged about $4,142 per acre (7,080 pounds per acre times $0.585 per pound). At that average price, a producer would have to farm over 181 acres to receive an annual income from dates of $750,000 ($750,000 divided by $4,142 per acre equals 181.1 acres). According to committee staff, the majority of California date producers farm fewer than 181 acres. Thus, it can be concluded that the majority of date producers could be considered small entities. According to data from the committee, the majority of handlers of California dates may also be considered small entities.

The amendments proposed by the committee would authorize the committee to recommend regulatory exemptions for dates by variety, provide for three years terms of office for committee members, provide for committee meetings by telephone and other means of communication, authorize an operating monetary reserve not to exceed one year's average expenses, and authorize the collection of interest and late payment charges on delinquent assessment payments.

Amendments proposed by AMS would provide for continuance referenda every six years, and would specify term limits of not more than six consecutive years for committee positions. Conforming changes to the order's administrative rules and regulations would be made as necessary to facilitate implementation of any amendments approved by voters in the referendum. Specifically, the committee's nomination and polling procedures would be modified to require that balloting materials be provided to producers by June 15 of every third year.

The committee's proposed amendments were unanimously recommended at public meetings held on October 30, 2008; October 29, 2009; and February 25, 2010. The committee believes that each of their proposed amendments would benefit producers and handlers of all sizes.

If granted authority to temporarily exempt certain date varieties from regulation, the committee could determine whether the costs of collecting assessments and reports on individual varieties are warranted. Handler burden related to those functions would be reduced for exempted varieties. Decreases in handler assessment obligation and reporting costs could be passed on to producers. Administrative costs related to enforcing regulatory compliance for those varieties would also be reduced.

Producer and handler participation in committee nominations is expected to improve if member terms of office are extended from two to three years. Extending the terms of office would afford the committee more time to identify and develop potential new members between committee selections. Coordinating committee nomination periods with those of other industry programs is expected to reduce voter confusion and increase the number of ballots returned, thus improving producer and handler representation on the committee.

Adding authority for alternative meeting formats is expected to improve participation in committee deliberations by industry members of all sizes. Such authority would minimize the time that committee members would be required to be away from their individual businesses. Authorizing the chairperson to determine the format for each meeting would ensure that critical committee business is addressed appropriately. By providing greater flexibility for meeting attendance and participation, the committee hopes to benefit from the input of a greater number of interested persons whose perspectives and ideas could improve the marketing of California dates, which would in turn benefit both producers and handlers.

Authorizing the committee to impose interest and late payment charges on delinquent assessments is intended to encourage handlers to make payments on a timely basis. There would be no additional cost to handlers who comply with the order's assessment requirements. Timely assessment payments allow the committee to make and keep financial obligations with regard to operation of its programs, including marketing and promotion, which are intended to benefit all producers and handlers.

If authority to build and maintain an operating reserve equal to one year's average expenses is added to the order, the committee could recommend increases to their assessment rate in order to gradually build the reserve. During high production years, excess assessments could be added to the reserve until the fund's limit is reached. The larger operating reserve would help ensure that the committee has sufficient funds to meet its financial obligations and maintain critical marketing programs, even during short crop years. Such stability is expected to allow the committee to conduct programs that will benefit all entities, regardless of size.

AMS's proposal to add provision for continuance referenda is expected to afford producers the opportunity to indicate ongoing support for the order and its programs. The proposal to add term limits is expected to encourage participation on the committee by all interested industry members. Support for the program, and active participation on the committee by a diverse group of industry members, are expected to benefit all producers and handlers by ensuring that the program continues to meet the industry's evolving needs.

Proposed changes to the order's nomination and polling regulations are administrative in nature and are intended to facilitate implementation of the proposed amendments, if adopted.

Where measurable, the costs outlined in this analysis are expected to be proportional to the size of business, so smaller businesses should not be unduly burdened. Benefits associated with improved efficiencies and greater representation on the committee should accrue to all entities, regardless of size.

Alternatives to these proposals include making no changes at this time. However, the proposed changes are necessary to update administration of the order to reflect current industry practices, provide consistent funding that will enable the committee to maintain valuable marketing programs, and provide greater opportunity for committee participation.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crops. No changes in those requirements as a result of this proceeding are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

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

The committee's meetings, at which these proposals were discussed, were widely publicized throughout the date industry. All interested persons were invited to attend the meetings and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the meetings were public, and all entities, both large and small, were encouraged to express their views on these proposals.

Finally, interested persons are invited to submit comments on the proposed amendments to the order as well as on the proposed revisions to the administrative rules and regulations that would be made if the amendments are adopted, including comments on the regulatory and informational impacts of this action on small businesses.

Following analysis of any comments received on the amendments proposed in this rule, AMS would conduct a producer referendum, if appropriate. Information about the referendum, including dates and voter eligibility requirements, would be published in a future issue of the **Federal Register**. If appropriate, a final rule would then be issued to effectuate the amendments favored by producers participating in the referendum and to finalize any conforming changes necessary to reflect amendments to the order.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide.* Any questions about the compliance guide should be sent to Antoinette Carter at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

General Findings

The findings hereinafter set forth are supplementary to the findings and determinations which were previously made in connection with the issuance of the marketing agreement and order; and all said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

1. The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, would tend to effectuate the declared policy of the Act;

2. The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of dates produced or packed in the production area (Riverside County, California) in the same manner as, and are applicable only to, persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order;

3. The marketing agreement and order, as amended, and as hereby proposed to be further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

4. The marketing agreement and order, as amended, and as hereby proposed to be further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of dates produced or packed in the production area; and

5. All handling of dates produced or packed in the production area as defined in the marketing agreement and order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

A 30-day comment period is provided to allow interested persons to respond to these proposals. Thirty days is deemed appropriate because the proposed changes have been widely publicized, and implementation of the changes, if adopted, would be desirable to benefit the industry as soon as possible. All written comments timely received will be considered, and a grower referendum will be conducted before any of the proposed amendments are implemented.

List of Subjects in 7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 987 is proposed to be amended as follows:

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

1. The authority citation for 7 CFR part 987 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Revise § 987.23 to read as follows:

§ 987.23 Term of office.

The term of office for members and alternate members shall be three years beginning August 1, except that such term may be shorter if the Committee composition is changed in the interim pursuant to § 987.21. *Provided,* That the terms of office of all members and alternates currently serving at the time of the amendment will end on July 31, 2014. Commencing with the term of office that begins on August 1, 2014, members may serve up to two consecutive three-year terms, not to exceed six consecutive years as members: *Provided,* That members who were serving at the time of the amendment and who continued to serve until 2014 may serve only one additional three-year term of office. Members who have served two consecutive terms or six years may not serve as members for at least one year before becoming eligible to serve again. Except as provided above, the limitation on consecutive terms of office and years of service does not apply to service on the committee prior to enactment of the amendment, and does not apply to alternates. Each member and alternate member shall, unless otherwise ordered by the Secretary, continue to serve until his or her successor has been selected and has qualified.

3. Revise paragraph (a) of § 987.24 to read as follows:

§ 987.24 Nomination and selection.

(a) Nomination for members and alternate members of the Committee shall be made not later than June 15 of every third year.

* * * * *

4. Amend § 987.31 by revising paragraphs (d) and (e) to read as follows:

§ 987.31 [Amended]

* * * * *

(d) At the discretion of the chairperson, Committee meetings may be assembled or conducted by means of teleconference, video conference, or other means of communication that may be developed. Assembled meetings may also allow for participation by means of teleconference or video conference or other communication methods, at the discretion of the chair. Members participating in meetings via any of these alternative means retain the same voting privileges that they would otherwise have.

(e) The Committee may vote upon any proposition by mail, or by telephone when confirmed in writing within two weeks, upon due notice and full and identical explanation to all members, including alternates acting as members, but any such action shall not be considered valid unless unanimously approved.

* * * * *

5. Amend § 987.52 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 987.52 [Amended]

(a) * * *

(b) The Committee may, with the approval of the Secretary, recommend that the handling of any date variety be exempted from regulations established pursuant to §§ 987.39 through 987.51 and §§ 987.61 through 987.72.

6. Amend § 987.72 by redesignating paragraphs (b) through (d) as paragraphs (c) through (e), respectively; by adding a new paragraph (b); and by revising redesignated paragraph (d) to read as follows:

§ 987.72 [Amended]

* * * * *

(b) *Delinquent payments.* Any assessment not paid by a handler within a period of time prescribed by the Committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest, and late payment charge shall be as recommended by the Committee and approved by the Secretary.

(c) * * *

(d) *Operating reserve.* The Committee, with the approval of the Secretary, may establish and maintain during one or more crop years an operating monetary reserve in an amount not to exceed the average of one year's expenses incurred during the most recent five preceding crop years, except that an established reserve need not be reduced to conform to any recomputed average. Funds in reserve shall be available for use by the Committee for expenses authorized pursuant to § 987.71.

* * * * *

7. Amend § 987.82 by revising paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(4), and adding a new paragraph (b)(3) to read as follows:

§ 987.82 [Amended]

* * * * *

(b) * * *

(2) *When favored by producers.* The Secretary shall terminate the provisions

of this part at the end of any crop year whenever he or she finds that such termination is favored by a majority of the producers of dates who, during that crop year, have been engaged in the production for market of dates in the area of production: *Provided,* That such majority have, during such period, produced for market more than 50 percent of the volume of such dates produced for market within said area; but such termination shall be effective only if announced on or before August 1 of the then current crop year.

(3) *Continuance referendum.* The Secretary shall conduct a referendum six years after the effective date of this section and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any crop year in which he or she has found that continuance of this part is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of dates in the production area.

* * * * *

8. Revise § 987.124(a) to read as follows:

§ 987.124 Nomination and polling.

(a) Date producers and producer-handlers shall be provided an opportunity to nominate and vote for individuals to serve on the Committee. For this purpose, the Committee shall, no later than June 15 of every third year, provide date producers and producer-handlers nomination and balloting material by mail or equivalent electronic means, upon which producers and producer-handlers may nominate candidates and cast their votes for members and alternate members of the Committee in accordance with the requirements in paragraphs (b)(1) and (b)(2) of this section, respectively. All ballots are subject to verification. Balloting material should be provided to voters at least two weeks before the due date and should contain, at least, the following information:

(1) The names of incumbents who are willing and eligible to continue to serve on the Committee;

(2) The names of other persons willing and eligible to serve;

(3) Instructions on how voters may add write-in candidates;

(4) The date on which the ballot is due to the Committee or its agent; and

(5) How and where to return ballots.

Dated: June 6, 2011.

Ellen King,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–14429 Filed 6–13–11; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0566; Directorate Identifier 2010–NM–271–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD would require modification of the fluid drain path in the leading edge area of the wing. This proposed AD was prompted by a design review following a ground fire incident and reports of flammable fluid leaks from the wing leading edge area onto the engine exhaust area. We are proposing this AD to prevent flammable fluid from leaking onto the engine exhaust nozzle, which could result in a fire.

DATES: We must receive comments on this proposed AD by July 29, 2011.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; *phone:* 206–544–5000, extension 1; *fax:* 206–766–5680; *e-mail: me.boecom@boeing.com; Internet: https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6505; *fax:* 425–917–6590; *e-mail: Tung.Tran@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–0566; Directorate Identifier 2010–NM–271–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received a report of fuel leaking from the wing leading edge area at the inboard end of the number 5 leading edge slat of a Model 737 airplane. The leak was discovered during a post-flight inspection with a fuel quantity of over 2,500 pounds. Subsequent investigation found that the leak occurred in an area of the front spar

that does not have a proper drain path. This led to the fuel draining onto the engine exhaust nozzle. The leak appears to have been caused by a loose retaining nut of the slat track down stop. We are proposing this AD to prevent flammable fluid from leaking onto the engine exhaust nozzle, which could result in a fire.

A Model 747 design review revealed that some of the design features in the Model 737 wing leading edge area also exist in Model 747 airplanes. Additional design reviews have led to similar findings in Model 757 and Model 767 airplanes. We have issued AD 2010–23–13 Amendment 39–16502 (75 FR 68688, November 9, 2009), for Model 757 airplanes, and are considering rulemaking for Model 737 and Model 767 airplanes.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010. This service information divides the affected airplanes into 10 groups. For all groups, this service information describes procedures for modifying the fluid drain path in the leading edge area of the wing. The modification consists of changing fluid dam assemblies at the wing outboard leading edge station (OLES) 1250, and installing seal assemblies at OLES 1185. Additionally, this service information specifies changing the lower leading edge wing panels through repairs, parts installation, and installing drain tube assemblies.

For Groups 1 through 6, this service information also specifies installing fluid dam assemblies at wing inboard leading edge station 770.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD will affect 258 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Fluid drainage modification (Groups 1–6) (143 airplanes).	95 work-hours × $85 per hour = $8,075	$33,609	$41,684	$5,960,812
Fluid drainage modification (Groups 7–10) (115 airplanes).	90 work-hours × $85 per hour = $7,650	29,304	36,954	4,249,710

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

The Boeing Company: Docket No. FAA–2011–0566; Directorate Identifier 2010–NM–271–AD.

Comments Due Date

(a) We must receive comments by July 29, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category, as identified in Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010.

Subject

(d) Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD was prompted by a design review following a ground fire incident and reports of flammable fluid leaks from the wing leading edge area onto the engine exhaust area. We are issuing this AD to prevent flammable fluid from leaking onto the engine exhaust nozzle, which could result in a fire.

Compliance

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

Leading Edge Installation

(g) Within 60 months after the effective date of this AD, modify the fluid drain path in the leading edge area of the wing, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2332, dated November 9, 2010.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be e-mailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/ certificate holding district office.

Related Information

(i) For more information about this AD, contact Tung Tran, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office (ACO), FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; *phone:* 425–917–6505; *fax:* 425–917–6590; *e-mail: Tung.Tran@faa.gov.*

(j) For service information identified in this AD, contact Boeing Commercial Airplanes, *Attention:* Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; *phone:* 206–544–5000, extension 1; *fax:* 206–766–5680; *e-mail: me.boecom@boeing.com; Internet: https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on June 7, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–14697 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0458; Airspace Docket No. 11–AAL–6]

RIN 2120–AA66

Proposed Modification of Offshore Airspace Areas: Norton Sound Low, Control 1234L and Control 1487L; Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Norton Sound Low, Control 1234L, and Control 1487L Offshore Airspace Areas in Alaska. The airspace floors would be lowered to provide controlled airspace beyond 12 miles from the coast of the United States given that there is a requirement to provide Instrument Flight Rules (IFR) en route Air Traffic Control (ATC) services and within which the United States is applying domestic ATC procedures.

DATES: Comments must be received on or before July 29, 2011.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2011–0458 and Airspace Docket No. 11–AAL–6 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2011–0458 and Airspace Docket No. 11–AAL–6) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2011–0458 and Airspace Docket No. 11–AAL–6.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Alaskan Service Center, Operations Support Group, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed

Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify the Norton Sound Low, Control 1234L, and Control 1487L Offshore Airspace Areas in Alaska. The Norton Sound Low Offshore Airspace Area would be modified by lowering the offshore airspace floor to 1,200 feet mean sea level (MSL) within a 73-mile radius of Port Clarence CGS Airport, excluding that airspace west of a line extending from lat. 64°48′20″ N., long. 169°31′27″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 66°05′44″ N., long. 168°58′23″ W.; and within 73 miles of the Savoonga Airport excluding that airspace west of a line from lat. 68°00′00″ N., long. 168°58′23″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 62°35′00″ N., long. 175°00′00″ W.; and within 73 miles of Platinum Airport excluding that airspace west of a line from lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W.

The Offshore Airspace Area Control 1234L would be modified by lowering the offshore airspace floor to 1,200 feet above the surface within a 10-mile radius of the Casco Cove CGS Airport. Additionally, Control 1234L would be further modified by lowering the offshore airspace floor to 700 feet above the surface within an 8-mile radius of St. Paul Island Airport, St. Paul Island, AK.

Control 1487L would be modified by lowering the offshore airspace floor to 1,200 feet above the surface within 75 miles of the Yakutat VOR/DME.

Offshore airspace areas are published in paragraph 2003 of FAA Order 7400.9U dated August 18, 2010 and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The offshore airspace areas listed in this document will be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies offshore airspace areas in Alaska.

Environmental Review

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

ICAO Considerations

As part of this proposal relates to navigable airspace outside the United States, this notice is submitted in accordance with the International Civil Aviation Organization (ICAO) International Standards and Recommended Practices.

The application of International Standards and Recommended Practices by the FAA, Office of Airspace Services, Airspace, Regulations and ATC Procedures Group, in areas outside the United States domestic airspace, is governed by the Convention on International Civil Aviation. Specifically, the FAA is governed by Article 12 and Annex 11, which pertain to the establishment of necessary air navigational facilities and services to promote the safe, orderly, and expeditious flow of civil air traffic. The purpose of Article 12 and Annex 11 is to ensure that civil aircraft operations on international air routes are performed under uniform conditions.

The International Standards and Recommended Practices in Annex 11 apply to airspace under the jurisdiction of a contracting state, derived from ICAO. Annex 11 provisions apply when air traffic services are provided and a contracting state accepts the responsibility of providing air traffic services over high seas or in airspace of undetermined sovereignty. A contracting state accepting this responsibility may apply the International Standards and Recommended Practices that are consistent with standards and practices utilized in its domestic jurisdiction.

In accordance with Article 3 of the Convention, state-owned aircraft are exempt from the Standards and Recommended Practices of Annex 11. The United States is a contracting state to the Convention. Article 3(d) of the Convention provides that participating state aircraft will be operated in international airspace with due regard for the safety of civil aircraft. Since this action involves, in part, the designation of navigable airspace outside the United States, the Administrator is consulting with the Secretary of State and the Secretary of Defense in accordance with the provisions of Executive Order 10854.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6007—Offshore Airspace Areas

* * * * *

Norton Sound Low, AK [Amended]

That airspace extending upward from 14,500 feet MSL within an area bounded by a line beginning at lat. 56°42′59″ N., long. 160°00′00″ W., then north by a line 12 miles from and parallel to the U.S. coastline to the intersection with 164°00′00″ W. longitude

near the outlet to Kotzebue Sound, then north to the intersection with a point 12 miles from the U.S. coastline, then north by a line 12 miles from and parallel to the shoreline to lat. 68°00′00″ N., long. 168°58′23″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to lat. 58°06′57″ N., long. 160°00′00″ W., to the point of beginning; and that airspace extending upward from 1,200 feet MSL north of the Alaska Peninsula and east of 160° W. longitude within 73 miles of Port Heiden NDB/DME, AK, and north of the Alaska Peninsula and east of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and north of the Alaska Peninsula and east of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK, and within a 35-mile radius of lat. 60°21′17″ N., long. 165°04′01″ W., and within a 73-mile radius of Chevak Airport, AK, and within a 73-mile radius of Clarks Point Airport, AK, and within a 73-mile radius of Elim Airport, AK, and within a 45-mile radius of Hooper Bay Airport, AK, and within a 73-mile radius of King Salmon Airport, AK, and that airspace within a 73-mile radius of Platinum Airport, AK, excluding that portion of the airspace extending west of a line from lat. 59°59′57″ N., long. 168°00′08″ W., to lat 57°45′57″ N., long. 161°46′08″ W., and within a 73-mile radius of Kivalina Airport, AK, and within a 74-mile radius of Kotzebue VOR/DME, AK, and within a 73-mile radius of Kwethluk Airport, AK, and within a 74-mile radius of Manokotak Airport, AK, and within a 73-mile radius of Napakiak Airport, AK, and within a 77.4-mile radius of Nome VORTAC, AK, and within a 73-mile radius of Savoonga Airport, AK, excluding that airspace west of a line from lat. 68°00′00″ N., long. 168°58′23″ W.; to lat. 65°00′00″ N., long. 168°58′23″ W., to lat. 62°35′00″ N., long. 175°00′00″ W., and within a 71NM radius of New Stuyahok Airport, AK, and within a 73-mile radius of Noatak Airport, AK, and within a 72.5-mile radius of Red Dog Airport, AK, and within a 73-mile radius of Scammon Bay Airport, AK, and within a 73-mile radius of Shaktoolik Airport, AK, and within a 74-mile radius of Selawik Airport, AK, and within a 73-mile radius of St. Michael Airport, AK, and within a 73-mile radius of Toksook Bay Airport, AK, and within a 73-mile radius of Port Clarence CGS Airport, AK excluding that airspace west of a line extending from lat. 64°48′20″ N., long. 169°31′27″ W., to lat. 65°00′00″ N., long. 168°58′23″ W., to 66°05′44″ N., to long. 168°58′23″ W., and within a 30-mile radius of lat. 66°09′58″ N., long. 166°30′03″ W., and within a 30-mile radius of lat. 66°19′55″ N., long. 165°40′32″ W.; and that airspace extending upward from 700 feet MSL within 8-miles west and 4-miles east of the 339° bearing from Port Heiden NDB/DME, AK, extending from Port Heiden NDB/DME, AK, to 20-miles north of Port Heiden NDB/DME, AK, and within a 25-mile radius of Nome Airport, AK.

* * * * *

Control 1234L, AK [Amended]

That airspace extending upward from 2,000 feet above the surface within an area bounded by a line beginning at lat. 58°06′57″ N., long. 160°00′00″ W., then south along 160°00′00″ W. longitude until it intersects the Anchorage Air Route Traffic Control Center (ARTCC) boundary; then southwest, northwest, north, and northeast along Anchorage ARTCC boundary to lat. 62°35′00″ N., long. 175°00′00″ W., to lat. 59°59′57″ N., long. 168°00′08″ W., to lat. 57°45′57″ N., long. 161°46′08″ W., to the point of beginning; and that airspace extending upward from 1,200 feet above the surface within a 10-mile radius of Casco Cove CGS Airport, AK, and within a 26.2-mile radius of Eareckson Air Station, AK, within an 11-mile radius of Adak Airport, AK, and within 16 miles of Adak Airport, AK, extending clockwise from the 033° bearing to the 081° bearing from Mount Moffett NDB, AK, and within a 10-mile radius of Atka Airport, AK, and within a 10.6-mile radius from Cold Bay Airport, AK, and within 9 miles east and 4.3 miles west of the 321° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 20 miles northwest of Cold Bay Airport, AK, and 4 miles each side of the 070° bearing from Cold Bay Airport, AK, extending from the 10.6-mile radius to 13.6 miles northeast of Cold Bay Airport, AK, and within a 26.2-mile radius of Eareckson Air Station, AK, and west of 160° W. longitude within an 81.2-mile radius of Perryville Airport, AK, and within a 73-mile radius of the Nikolski Airport, AK, within a 74-mile radius of Manokotak Airport, AK, and within a 73-mile radius of the Clarks Point Airport, AK, and west of 160° W. longitude within a 73-mile radius of Port Heiden NDB/DME, AK, and within a 10-mile radius of St. George Airport, AK, and within a 73-mile radius of St. Paul Island Airport, AK, and within a 20-mile radius of Unalaska Airport, AK, extending clockwise from the 305° bearing from Dutch Harbor NDB, AK, to the 075° bearing from Dutch Harbor NDB, AK, and west of 160° W. longitude within a 25-mile radius of Borland NDB/DME, AK, and west of 160° W. longitude within a 72.8-mile radius of Chignik Airport, AK; and that airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Eareckson Air Station, AK, and within a 7-mile radius of Adak Airport, AK, and within 5.2 miles northwest and 4.2 miles southeast of the 061° bearing from Mount Moffett NDB, AK, extending from the 7-mile radius of Adak Airport, AK, to 11.5 miles northeast of Adak Airport, AK, and within a 6.5-mile radius of King Cove Airport, and extending 1.2 miles either side of the 103° bearing from King Cove Airport from the 6.5-mile radius out to 8.8 miles, and within a 6.4-mile radius of Atka Airport, AK, and within a 6.3-mile radius of Nelson Lagoon Airport, AK, and within a 6.3-mile radius of the Nikolski Airport, AK, and within a 6.4-mile radius of Sand Point Airport, AK, and within 3 miles each side of the 172° bearing from Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 13.9 miles south of Sand Point Airport, AK, and within 5 miles either side of the 318° bearing from Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within 5 miles either side of the 324° bearing from Borland NDB/DME, AK, extending from the 6.4-mile radius of Sand Point Airport, AK, to 17 miles northwest of Sand Point Airport, AK, and within a 6.6-mile radius of St. George Airport, AK, and within an 8-mile radius of St. Paul Island Airport, AK, and within a 6.4-mile radius of Unalaska Airport, AK, and within 2.9 miles each side of the 360° bearing from the Dutch Harbor NDB, AK, extending from the 6.4-mile radius of Unalaska Airport, AK, to 9.5 miles north of Unalaska Airport, AK; and that airspace extending upward from the surface within a 4.6-mile radius of Cold Bay Airport, AK, and within 1.7 miles each side of the 150° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 7.7 miles southeast of Cold Bay Airport, AK, and within 3 miles west and 4 miles east of the 335° bearing from Cold Bay Airport, AK, extending from the 4.6-mile radius to 12.2 miles northwest of Cold Bay Airport, AK.

* * * * *

Control 1487L, Alaska [Amended]

That airspace extending upward from 8,000 feet MSL within 149.5 miles of the Anchorage VOR/DME clockwise from the 090° radial to the 185° radial of the Anchorage VOR/DME, AK; and that airspace extending upward from 5,500 feet MSL within the area bounded by a line beginning at lat. 58°19′58″ N., long. 148°55′07″ W., to lat. 59°08′35″ N., long. 147°16′04″ W., thence counterclockwise via the 149.5-mile radius of the Anchorage VOR/DME, AK, to the intersection with a point 12 miles from and parallel to the U.S. coastline, thence southeast 12 miles from and parallel to the U.S. coastline to a point 12 miles offshore on the Vancouver FIR boundary, to lat. 54°32′57″ N., long. 133°11′29″ W., to lat. 54°00′00″ N., long. 136°00′00″ W., to lat. 52°43′00″ N., long. 135°00′00″ W., to lat 56°45′42″ N., long. 151°45′00″ W., to the point of beginning; and that airspace extending upward from 1,200 feet MSL within an 85-mile radius of the Biorka Island VORTAC, AK, and within a 43-mile radius of the Middleton Island VOR/DME, AK, and within a 30-mile radius of the Glacier River NDB, AK, and within a 149.5-mile radius of the Anchorage VOR/DME, AK, and within the 73-mile radius of Homer Airport, AK, and within a 75-mile radius of the Yakutat VOR/DME, AK, and that airspace extending upward from 700 feet MSL within 14 miles of the Biorka Island VORTAC, AK, and within 4 miles west and 8 miles east of the Biorka Island VORTAC 209° radial extending to 16 miles southwest of the Biorka Island VORTAC, AK.

* * * * *

Issued in Washington, DC, on June 6, 2011.

Gary A. Norek,

Acting Manager, Airspace, Regulations and ATC Procedures Group.

[FR Doc. 2011–14715 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2011–0346, FRL–9318–6]

Approval and Promulgation of Implementation Plans; New Hampshire: Prevention of Significant Deterioration; Greenhouse Gas Permitting Authority and Tailoring Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a requested revision to New Hampshire's State Implementation Plan (SIP) under the Clean Air Act (CAA or Act). The proposed SIP revision was submitted by New Hampshire, through the New Hampshire Department of Environmental Services (NH DES), Air Resources Division, to EPA on February 7, 2011. The proposed SIP revision modifies New Hampshire's Prevention of Significant Deterioration (PSD) program to establish appropriate emission thresholds for determining which new stationary sources and modification projects become subject to New Hampshire's PSD permitting requirements for their greenhouse gas (GHG) emissions. This rule clarifies the applicable thresholds in the New Hampshire SIP, addresses the flaw discussed in the SIP Narrowing Rule, and incorporates state rule changes adopted at the state level into the Federally-approved SIP. EPA is proposing approval of New Hampshire's February 7, 2011, SIP revision because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

DATES: Comments must be received on or before July 14, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2011–0346, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: dahl.donald@epa.gov.*
3. *Fax:* (617) 918–0657.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2011–0346,'' Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912.
5. *Hand Delivery or Courier:* Deliver your comments to: Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R01–OAR–2011–0346.'' 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 through *http://www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. 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 electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, Boston, Massachusetts. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: For information regarding the New Hampshire SIP, contact Donald Dahl, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Permits, Toxics, and Indoor Programs Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109—3912. Mr. Dahl's telephone number is (617) 918–1657; *e-mail address: dahl.donald@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What action is EPA proposing in this document?

On February 7, 2011, NH DES submitted a revision to EPA for approval into the New Hampshire SIP to establish appropriate emission thresholds for determining which new or modified stationary sources become subject to New Hampshire's PSD permitting requirements for GHG emissions. Due to a previous EPA action known as the SIP Narrowing Rule, starting on January 2, 2011, the approved New Hampshire SIP's PSD requirements for GHG now apply at the thresholds specified in the Tailoring Rule, not at the 100 or 250 tons per year (tpy) levels otherwise provided under the CAA, which would overwhelm New Hampshire's permitting resources. Final approval of this SIP revision request will put in place the GHG emission thresholds for PSD applicability set forth in EPA's Tailoring Rule, ensuring that smaller GHG sources emitting less than these thresholds will not be subject to permitting requirements. Pursuant to section 110 of the CAA, EPA is

proposing to approve this revision into the New Hampshire SIP.

II. What is the background for the action proposed by EPA in this document?

This section briefly summarizes EPA's recent GHG-related actions that provide the background for today's proposed action. More detailed discussion of the background is found in the preambles for those actions. In particular, the background is contained in what we call the GHG PSD SIP Narrowing Rule,[1] and in the preambles to the actions cited therein.

A. GHG-Related Actions

EPA has recently undertaken a series of actions pertaining to the regulation of GHGs that, although for the most part distinct from one another, establish the overall framework for today's final action on the New Hampshire SIP. Four of these actions include, as they are commonly called, the ''Endangerment Finding'' and ''Cause or Contribute Finding,'' which EPA issued in a single final action,[2] the ''Johnson Memo Reconsideration,''[3] the ''Light-Duty Vehicle Rule,''[4] and the ''Tailoring Rule.''[5] Taken together and in conjunction with the CAA, these actions established regulatory requirements for GHGs emitted from new motor vehicles and new motor vehicle engines; determined that such regulations, when they took effect on January 2, 2011, subjected GHGs emitted from stationary sources to PSD requirements; and limited the applicability of PSD requirements to GHG sources on a phased-in basis. EPA took this last action in the Tailoring Rule, which, more specifically, established appropriate GHG emission thresholds for determining the applicability of PSD requirements to GHG-emitting sources.

PSD is implemented through the SIP system, and so in December 2010, EPA promulgated several rules to implement the new GHG PSD SIP program. Recognizing that some states had approved SIP PSD programs that did not apply PSD to GHGs, EPA issued a SIP call and, for some of these states, a FIP.[6] Recognizing that other states had approved SIP PSD programs that do apply PSD to GHGs, but that do so for sources that emit as little as 100 or 250 tpy of GHG, and that do not limit PSD applicability to GHGs to the higher thresholds in the Tailoring Rule, EPA issued the GHG PSD SIP Narrowing Rule. Under that rule, EPA withdrew its approval of the affected SIPs to the extent those SIPs covered GHG-emitting sources below the Tailoring Rule thresholds. EPA based its action primarily on the ''error correction'' provisions of CAA section 110(k)(6).

B. New Hampshire's Actions

On July 30, 2010, New Hampshire provided a letter to EPA, in accordance with a request to all States from EPA in the Tailoring Rule, with confirmation that the State has the authority to regulate GHG in its PSD program. The letter also confirmed that current New Hampshire rules require regulating GHGs at the existing 100/250 tpy threshold, rather than at the higher thresholds set in the Tailoring Rule. See the docket for this proposed rulemaking for a copy of New Hampshire's letter.

In the SIP Narrowing Rule, published on December 30, 2010, EPA withdrew its approval of New Hampshire's SIP (among other SIPs) to the extent that the SIP applies PSD permitting requirements to GHG emissions from sources emitting at levels below those set in the Tailoring Rule.[7] As a result, New Hampshire's current approved SIP provides the state with authority to regulate GHGs, but only at and above the Tailoring Rule thresholds; and requires new and modified sources to receive a Federal PSD permit based on GHG emissions only if they emit at or above the Tailoring Rule thresholds.

The basis for this proposed SIP revision is that limiting PSD applicability to GHG sources to the higher thresholds in the Tailoring Rule is consistent with the SIP provisions that provide required assurances of adequate resources, and thereby addresses the flaw in the SIP that led to the SIP Narrowing Rule. Specifically, CAA section 110(a)(2)(E) includes as a requirement for SIP approval that States provide ''necessary assurances that the State * * * will have adequate personnel [and] funding * * * to carry out such [SIP].'' In the Tailoring Rule, EPA established higher thresholds for PSD applicability to GHG-emitting sources on grounds that the states generally did not have adequate resources to apply PSD to GHG-emitting sources below the Tailoring Rule thresholds,[8] and no State, including New Hampshire, asserted that it did have adequate resources to do so.[9] In the SIP Narrowing Rule, EPA found that the affected states, including New Hampshire, had a flaw in their SIP at the time they submitted their PSD programs, which was that the applicability of the PSD programs was potentially broader than the resources available to them under their SIP.[10] Accordingly, for each affected state, including New Hampshire, EPA concluded that EPA's action in approving the SIP was in error, under CAA section 110(k)(6), and EPA rescinded its approval to the extent the PSD program applies to GHG-emitting sources below the Tailoring Rule thresholds.[11] EPA recommended that States adopt a SIP revision to incorporate the Tailoring Rule thresholds, thereby (i) assuring that under State law, only sources at or above the Tailoring Rule thresholds would be subject to PSD; and (ii) avoiding confusion under the Federally approved SIP by clarifying that the SIP applies to only sources at or above the Tailoring Rule thresholds.[12]

[1] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (Dec. 30, 2010).

[2] ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act.'' 74 FR 66496 (Dec. 15, 2009).

[3] ''Interpretation of Regulations that Determine Pollutants Covered by Clean Air Act Permitting Programs.'' 75 FR 17004 (Apr. 2, 2010).

[4] ''Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule.'' 75 FR 25324 (May 7, 2010).

[5] ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule; Final Rule.'' 75 FR 31514 (June 3, 2010).

[6] Specifically, by action dated December 13, 2010, EPA finalized a ''SIP Call'' that would require those states with SIPs that have approved PSD programs but do not authorize PSD permitting for GHGs to submit a SIP revision providing such authority. ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (Dec. 13, 2010). EPA has begun making findings of failure to submit that would apply in any state unable to submit the required SIP revision by its deadline, and finalizing FIPs for such states. *See, e.g.* ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revisions Required for Greenhouse Gases,'' 75 FR 81874 (Dec. 29, 2010); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan,'' 75 FR 82246 (Dec. 30, 2010). Because New Hampshire's SIP already authorizes New Hampshire to regulate GHGs once GHGs became subject to PSD requirements on January 2, 2011, New Hampshire is not subject to the proposed SIP Call or FIP.

[7] ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule.'' 75 FR 82536 (Dec. 30, 2010).

[8] Tailoring Rule, 75 FR 31517.

[9] SIP Narrowing Rule, 75 FR 82540.

[10] *Id.* at 82542.

[11] *Id.* at 82544.

[12] *Id.* at 82540.

III. What is EPA's analysis of New Hampshire's SIP revision?

The regulatory revisions that NH DES submitted on February 7, 2011, establish thresholds for determining which stationary sources and modification projects become subject to permitting requirements for GHG emissions under New Hampshire's PSD program. Specifically, the submittal includes changes to New Hampshire's regulations at Air Resources Division Env–A 101 (Definitions) and Env–A 619 (PSD Permit Requirements) that New Hampshire finalized in December 2010.

New Hampshire is currently a SIP-approved state for the PSD program. In a letter provided to EPA on July 30, 2010, New Hampshire notified EPA of its interpretation that the State currently has the authority to regulate GHGs under its PSD regulations. The currently-approved New Hampshire PSD SIP (adopted prior to the promulgation of EPA's Tailoring Rule) applies to major stationary sources (having the potential to emit at least 100 tpy or 250 tpy or more of a regulated NSR pollutant, depending on the type of source) or modifications constructing in areas designated attainment or unclassifiable with respect to the NAAQS.

The amendments to Env–A 101 that EPA is proposing to approve into the New Hampshire SIP include: New Env–A 101.35, definition of ''Carbon dioxide equivalent emissions''; new Env–A 101.96, definition of ''Greenhouse gases''; an amendment to the definition of ''Major source'' in Env–A 101.115; and certain amendments to Env–A 619.03, ''PSD Permit Requirements.''

New Hampshire's original SIP revision request to EPA, dated February 7, 2011, proposed to incorporate all of the amendments to Env–A 619.03 as part of its SIP revision request. After an exchange of correspondence, on May 16, 2011, New Hampshire withdrew from consideration its recent revisions to Env–A 619.03(a). Thus, EPA is proposing to approve into the SIP Env–A 619.03(b)–(e) as revised, but, in place of the revised Env–A 619.03(a), to retain its previously-approved predecessor, which was then numbered as Env–A 623.03(a).[13] New Hampshire's previously-approved PSD regulations became effective under state law on July 23, 2001 and were approved by EPA on October 28, 2002 (67 FR 65710). EPA and New Hampshire agree that relying on the previously-approved version of Env–A 619.03(a) does not affect the manner in which Env–A 619.03(b)–(e) function. New Hampshire and EPA may take action on the revision to Env–A 619.03(a) in the future.

The changes to New Hampshire's PSD program regulations that EPA is proposing to approve are substantively the same as the amendments to the Federal PSD regulatory provisions in EPA's Tailoring Rule regarding greenhouse gases. As part of its review of this submittal, EPA performed a line-by-line review of New Hampshire's proposed revision and has preliminarily determined that they are consistent with the Tailoring Rule.

EPA has, however, identified several minor differences between the proposed SIP revision and EPA's PSD regulations. These differences arise from the fact that New Hampshire's PSD SIP consists, in the main, of an incorporation by reference of 40 CFR 52.21 as it stood when the PSD SIP was approved. For purposes of regulating greenhouse gases, however, New Hampshire has incorporated by reference the definitions of ''major stationary source'' and ''significant'' contained in 40 CFR 52.21(b), July 1, 2009 edition, and the definitions of ''subject to regulation'' and ''regulated NSR pollutant'' promulgated by EPA in the Tailoring Rule and codified at 40 CFR 52.21(b)(49)–(50). These differences and EPA's analysis of why they do not affect approvability are explained in a memorandum ''Explanation of Two Definitions in New Hampshire's PSD Regulations.'' See the docket for this proposed rulemaking for a copy of the memorandum.

IV. Proposed Action

Pursuant to section 110 of the CAA, EPA is proposing to approve New Hampshire's February 7, 2011 SIP revision relating to PSD requirements for GHG-emitting sources. Specifically, New Hampshire's February 7, 2011 SIP revision establishes appropriate emissions thresholds for determining PSD applicability to new and modified GHG-emitting sources in accordance with EPA's Tailoring Rule. EPA has made the preliminary determination that this SIP revision is approvable because it is in accordance with the CAA and EPA regulations regarding PSD permitting for GHGs.

If EPA does approve New Hampshire's changes to its air quality regulations to incorporate the appropriate thresholds for GHG permitting applicability into New Hampshire's SIP, then § 52.1522(c) of 40 CFR part 52, as included in EPA's SIP Narrowing Rule—which codifies EPA's limiting its approval of New Hampshire's PSD SIP to not cover the applicability of PSD to GHG-emitting sources below the Tailoring Rule thresholds—is no longer necessary. In today's proposed action, EPA is also proposing to amend § 52.1522(c) of 40 CFR part 52 to remove this unnecessary regulatory language.

V. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

[13] Env–A 623 was renumbered to Env–A 619 for reasons unrelated to the Tailoring Rule or this proposed revision.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: June 1, 2011.

H. Curtis Spalding,

Regional Administrator, EPA New England.

[FR Doc. 2011–14684 Filed 6–13–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, and 476

[CMS–1518–CN]

RIN 0938–AQ24

Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of proposed rule.

SUMMARY: This document corrects technical and typographical errors in the proposed rule entitled ''Medicare Program; Proposed Changes to the Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Fiscal Year 2012 Rates'' which appeared in the May 5, 2011, **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Tzvi Hefter, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–9644 of May 5, 2011 (76 FR 25788), there were a number of technical and typographical errors that are identified and corrected in the Correction of Errors section.

II. Summary of Errors

A. Errors in the Preamble

On page 25796, in summarizing our proposed changes to the policies and payment rates for the long-term care hospital (LTCH) prospective payment system (PPS), we erroneously stated that we were proposing a FY 2012 LTCH PPS documentation and coding adjustment. Therefore, in section III. of this correction notice, we correct this.

On page 25843, in our discussion of processing of 25 diagnosis codes and 25 procedures codes, we erroneously included the term ''not'' in our statement regarding the completion of the expansion and our ability to process up to 25 diagnosis codes and 25 procedures codes. Therefore, in section III. of this correction notice, we correct this error.

On page 25898, we erroneously stated that collection for the structural measure we proposed for the FY 2014 payment determination would begin in July 2012 with respect to the time period January 1, 2012 through June 30, 2012, instead of collection to begin in April 2013 with respect to the time period January 1, 2012 through December 31, 2012. Therefore, in section III. of this correction notice, we correct these errors.

On page 25919, in our discussion of the proposed data submission requirements for structural measures, we included a sentence that contains the proposed additional structural measure for FY 2014 as well as information regarding the proposed alignment of the submission deadline for all structural measures without clear delineation of when the proposed alignment begins. Therefore, we correct this error in section III. of this correction notice.

On page 25923, we made several typographical errors regarding the fiscal year for which we are proposing to change the submission deadline to be used for the Data Accuracy and Completeness Acknowledgement. Therefore, in section III. of this correction notice, we correct these errors.

On page 25985 and 25989, in our discussion of the LTCH quality measures, we noted that the National Quality Forum (NQF) endorsement number for the CMS quality measure, Percent of Residents With Pressure Ulcers That Are New or Worsened [Short Stay], was NH–012–10. We note that the NQF number NH–012–10 has been replaced by the current endorsement number, which is NQF–0678. Therefore, in section III. of this correction notice, we correct these errors.

B. Errors in the Addendum

On page 26043, we list Table 2—Acute Care Hospitals Case-Mix Indexes for Discharges Occurring in Federal Fiscal Year 2010; Proposed Hospital Wage Indexes for Federal Fiscal Year 2012; Hospital Average Hourly Wages for Federal Fiscal Year 2010 (2006 Wage Data), 2011 (2007 Wage Data), and 2012 (2008 Wage Data); and 3-Year Average of Hospital Average Hourly Wages as one of the tables that will be available only through the Internet. The version of Table 2 that was posted via the Internet on the CMS Web site at the time the proposed rule was filed for public inspection at the Office of the Federal Register inadvertently omitted the wage indices for multicampus providers. Therefore, we have corrected these errors and have posted a document with corrections to Table 2 on the CMS Web site at *http://www.cms.hhs.gov/AcuteInpatientPPS/01_overview.asp*).

III. Correction of Errors

In FR Doc. 2011–9644 of May 5, 2011 (76 FR 25788), make the following corrections:

1. On page 25796, second column, sixth full paragraph, lines 8 through 11, the phrase ''use under the LTCH PPS for FY 2012, the proposed documentation and coding adjustment under the LTCH PPS for FY 2012, and the proposed rebasing and'' is corrected to read ''use under the LTCH PPS for FY 2012 and the proposed rebasing and''.

2. On page 25843, third column, first full paragraph, line 33 the phrase ''We have not completed'' is corrected to read ''We have completed''.

3. On page 25898, first column, first paragraph,

a. Line 2, the date ''July 2012'' is corrected to read ''April 2013''.

b. Line 4, the date ''June 30, 2012'' is corrected to read ''December 31, 2012''.

4. On page 25919, second column, first full paragraph, lines 4 through 12, the sentence ''We are proposing to add one additional structural measure for the FY 2014 payment determination, Participation in a Systematic Clinical Database Registry for General Surgery, and to align the submission deadline for all structural measures with the submission deadline for the fourth quarter of the chart abstracted measures.'' is corrected to read as follows ''We are proposing to add one additional structural measure for the FY 2014 payment determination, Participation in a Systematic Clinical Database Registry for General Surgery. Beginning with FY 2013, we propose to

align the submission deadline for all structural measures with the submission deadline for the fourth quarter of the chart abstracted measures.''.

5. On page 25923, second column, last paragraph,

a. Line 7, the phrase ''FY 2012'' is corrected to read ''FY 2013''.

b. Line 15, the phrase ''FY 2012'' is corrected to read ''FY 2013''.

6. On page 25985,

a. Second column, second full paragraph, line 6, the reference number ''NQF NH–012–10'' is corrected to read ''NQF 0678''.

b. Third column, first full paragraph, line 7, the reference number ''NQF NH–012–10'' is corrected to read ''NQF 0678''.

7. On page 25989, lower two-thirds of the page, third column, first partial paragraph, line 3, the reference number ''NQF NH–012–10'' is corrected to read ''NQF 0678''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 8, 2011.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2011–14679 Filed 6–9–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8, 9, and 52

[FAR Case 2009–024; Docket 2011–0086; Sequence 1]

RIN 9000–AM07

Federal Acquisition Regulation; Prioritizing Sources of Supplies and Services for Use by the Government

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

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to limit the section of the FAR addressing the priorities for use of Government supply sources to a discussion of the mandatory Government sources of supplies and services. Also, a new section is added to encourage agencies to give priority consideration to using certain sources, despite the fact that the use of the listed sources is not mandatory.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addressees shown below on or before August 15, 2011 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2009–024 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2009–024'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2009–024.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2009–024'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), *Attn:* Hada Flowers, 1275 First Street, NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2009–024, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Mr. William Clark, Procurement Analyst, at (202) 219–1813 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2009–024.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR part 8. FAR part 8 requires Federal agencies to satisfy their requirements for supplies and services from or through a list of sources in order of priority. This proposed rule would amend FAR part 8 by revising FAR 8.000, 8.002, 8.003, and 8.004, eliminating outdated categories, and distinguishing between Government sources (*e.g.,* Federal Supply Schedules (FSS)) and private-sector sources.

The impetus for this proposed rule is the Government Accountability Office (GAO) decision in the protest of Murray-Benjamin Electric Company, B–298481, 2006 CPD 129, September 7, 2006 at (*http://www.gao.gov/decisions/bidpro/298481.pdf*). As a result of this GAO decision, clarification was needed, in FAR part 8, on the use and consideration of FSS contracts before commercial sources in the open market.

The proposed rule amends FAR 8.002 as follows: The title is revised, as appropriate, to indicate the section establishes the priorities for mandatory Government sources. The term ''Mandatory Federal Supply Schedules'' is removed. ''Optional Use Federal Supply Schedules'' is re-named ''Federal Supply Schedules'' and is proposed to be moved to a new section (FAR 8.004) as a non-mandatory source. Commercial sources, currently listed under FAR 8.002(a), and Federal Prison Industries, Inc., listed as a source for services at FAR 8.002(a)(2), would also be moved to the new section as non-mandatory sources because neither one is a ''mandatory Government source.''

Additionally, the title at FAR 8.003 is amended to indicate that the list is of mandatory sources, but recognize that they are not all Government sources. Also, the word ''supplies'' would be deleted from the title because these sources also provide services.

A new section, FAR 8.004, Use of other sources, is proposed to be added to list non-mandatory sources that agencies are encouraged to consider after first considering the mandatory sources listed at FAR 8.002 and 8.003. This section highlights existing contracts intended for use by multiple agencies (*e.g.,* Federal Supply Schedules, Governmentwide acquisition contracts (GWACs), and multi-agency contracts (MACs)) and ordering instruments intended for use by multiple agencies, such as blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (*e.g.,* Federal Strategic Sourcing Initiative (FSSI) agreements). The existing contracts and instruments are not listed in any order of priority, and separate paragraphs distinguish supplies from services. When obtaining services, agencies are encouraged to consider the same sources listed for supplies under FAR 8.004, with the addition of Federal Prison Industries, Inc. as another non-mandatory source for services pursuant to FAR subpart 8.6. Agencies would be encouraged to consider these sources before satisfying requirements for supplies and services from commercial sources in the open market. The proposed FAR 8.004 would also provide a cross-reference to FAR 5.601, where the Web site for the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies via the Internet

at *http://www.contractdirectory.gov* is provided.

Conforming changes are proposed at FAR 9.405–1 to delete the words ''optional use''; and at FAR 52.208–9 to correct the cross-reference to the clause prescription.

II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the rule does not impose any additional requirements on small businesses, but clarifies existing regulations, in FAR part 8, on the use of existing mandatory and non-mandatory sources.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–024), in correspondence.

IV. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 8, 9, and 52

Government procurement.

Dated: June 8, 2011.

Millisa Gary,

Acting Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8, 9, and 52 as set forth below:

1. The authority citation for 48 CFR parts 8, 9, and 52 continues to read as follows:

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

2. Revise section 8.000 to read as follows:

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.000 Scope of part.

This part deals with prioritizing sources acquisition of supplies and services for use by the Government.

3. Amend section 8.002 by—

a. Revising the section heading;

b. Removing from the introductory text of paragraph (a) ''sources'' and adding ''mandatory Government sources'' in its place;

c. Removing paragraphs (a)(1)(vi), (a)(1)(vii), and (a)(1)(viii); and

d. Revising paragraph (a)(2).

The revised text reads as follows:

8.002 Priorities for use of mandatory Government sources.

(a) * * *

(2) *Services.* Services which are on the Procurement List maintained by the Committee for Purchase From People Who Are Blind or Severely Disabled (see subpart 8.7).

* * * * *

8.003 Use of other mandatory sources.

4. Amend section 8.003 by revising the section heading as set forth above.

5. Redesignate section 8.004 as section 8.005 and add a new section 8.004 to read as follows:

8.004 Use of other sources.

Where an agency is unable to satisfy requirements for supplies and services from the mandatory sources listed in 8.002 and 8.003, agencies are encouraged to consider satisfying requirements from or through the non-mandatory sources listed in paragraph (a) of this section before considering the non-mandatory sources listed in paragraph (b) of this section.

(a)(1) *Supplies.* Federal Supply Schedules, Governmentwide acquisition contracts, multi-agency contracts, and any other procurement instruments intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts (*e.g.,* Federal Strategic Sourcing Initiative (FSSI) agreements accessible at *http://www.gsa.gov/fssi* (see also 5.601)).

(2) *Services.* In addition to the sources listed in paragraph (a)(1) of this section, agencies are encouraged to consider Federal Prison Industries, Inc. (see subpart 8.6).

(b) Commercial sources (including educational and non-profit institutions) in the open market.

8.402 [Amended]

6. Amend section 8.402 by removing from paragraph (a) ''(see 8.002)'' and adding ''(see 8.004)'' in its place.

PART 9—CONTRACTOR QUALIFICATIONS

9.405–1 [Amended]

7. Amend section 9.405–1 by removing from paragraph (b)(2) ''optional use''.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–9 [Amended]

8. Amend section 52.208–9 by removing from the introductory paragraph ''8.004'' and adding ''8.005'' in its place.

[FR Doc. 2011–14650 Filed 6–13–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–1997–2210]

RIN 2126–AB39

Medical Certification Requirements as Part of the Commercial Driver's License (CDL); Extension of Certificate Retention Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FMCSA proposes to keep in effect until January 30, 2014, the requirement that interstate drivers subject to the commercial driver's license (CDL) regulations and the Federal physical qualification requirements must retain a paper copy of the medical examiner's certificate. Interstate motor carriers would also be

required to retain a copy of the medical certificate in the driver qualification files. This action is being taken to ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner's certificate data on the Commercial Driver's License Information System (CDLIS) driver record. This proposed rule would not, however, extend the mandatory dates for States to comply with the requirement to collect and to post to the CDLIS driver record data from a CDL holder's medical self-certification and medical examiner's certificate.

DATES: Comments must be received on or before June 29, 2011.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–1997–2210 using any one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008, (73 FR 3316) or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Senior Transportation Specialist, Office of Safety Programs, Commercial Driver's License Division (MC–ESL), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–5014.

SUPPLEMENTARY INFORMATION:

Legal Basis

Medical Certification Requirements as Part of the CDL

The legal basis of the final rule titled ''Medical Certification Requirements as Part of the Commercial Driver's License,'' issued on December 1, 2008, (73 FR 73096–73097) is also applicable to this rule.

Background

On December 1, 2008, FMCSA published a final rule adopting regulations to implement section 215 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1767 (Dec. 9, 1999)) (MCSIA). The 2008 final rule requires any CDL holder subject to the physical qualification requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) to provide a current original or copy of his or her medical examiner's certificate to the issuing State Driver Licensing Agency (SDLA). The Agency also requires the SDLA to post in the CDLIS driver record the self-certification that CDL holders are required to make regarding applicability of the Federal physical qualification requirements and, for drivers subject to those requirements, the medical certification information specified in the regulations. Other conforming requirements for both SDLAs and employers also were implemented (73 FR 73096–73128). These requirements, for the most part, have a compliance date of January 30, 2012. On May 21, 2010, the Agency published several technical amendments to the 2008 final rule to make certain corrections and to address certain petitions for reconsideration of the same final rule (75 FR 28499–28502).

Several SDLAs have recently advised the Agency that they may not have the capability by January 30, 2012, to receive the required medical certification and medical examiner's certificate information provided by a non-excepted, interstate CDL holder, and then manually post it to the CDLIS driver record. Inability of an SDLA to receive the required material would render both the CDL holder and his or her employer unable to demonstrate or verify, respectively, that the driver is medically certified in compliance with the FMCSRs.

Discussion of the Proposed Rule

The FMCSA proposes to maintain in effect until January 30, 2014, the requirement for an interstate CDL holder subject to the Federal physical qualification standards to carry a paper copy of the driver's medical examiner's certificate. Until January 30, 2014, a CDL holder would continue to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy, as valid proof of medical certification. Also, interstate motor carriers that employ CDL holders would need to continue to obtain and file a copy of the CDL holder's medical examiner's certificate in its driver qualification files, as specified at § 391.51(b)(7), if the motor carrier is unable to obtain that information from the SDLA issuing the CDL to the driver. This action is being proposed to ensure the medical qualification of CDL holders until all States are able to post the medical self-certification and medical examiner's certificate data on the CDLIS driver record.

There is no change in the compliance dates for SDLAs established in the 2008 final rule. SDLAs are expected to meet the January 30, 2012, date to start collecting from CDL applicants and posting and retaining this data on the CDLIS driver record and, in addition, to collect and post the same data from all existing CDL holders by the January 30, 2014, compliance date. The Agency believes that extending the requirement to retain the paper copy of the medical examiner's certificate by both the interstate CDL holder and the motor carriers for 2 years will provide sufficient time for them to be sure that all SDLAs will be obtaining the medical status and medical examiner's certificate information and posting it on the driver's CDLIS driver record.

Rulemaking Analyses and Notices

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

The FMCSA has determined that this proposed action is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563, 76 FR 3821 (Jan. 21, 2011), or within the meaning of the Department of Transportation regulatory policies and procedures. Therefore, the Agency was not required to submit this regulatory action to the Office of Management and Budget (OMB). The changes proposed in this NPRM would have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule extends until January 30, 2014, the existing requirement for interstate CDL holders subject to Federal physical qualifications requirements and their employers to retain a copy of the medical examiner's certificate. Because extending the current requirement would not materially impact small entities more than the current regulations, FMCSA certifies that this proposed action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value in 2011 of $100 million after adjusting for inflation) or more in any 1 year. The FMCSA has determined that the impact of this proposed rulemaking will not reach this threshold.

Executive Order 12988 (Civil Justice Reform)

This action 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)

The FMCSA analyzed this action under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. We determined that this proposed rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rulemaking does not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FMCSA analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2008 final rule had Federalism implications, FMCSA determined that it did not create 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. This proposed rulemaking does not change that determination in any way.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this action.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that no new information collection requirements are associated with the proposed amendments in this NPRM.

National Environmental Policy Act

The FMCSA analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, (69 FR 9680) that this proposed action does not have any significant impact on the environment. In addition, the proposed actions in this NPRM are categorically excluded from further analysis and documentation as per paragraph 6.b of Appendix 2 of FMCSA's Order 5610.1. The FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. This action is exempt from the CAA's general conformity requirement since the action results in no increase in emissions.

Executive Order 13211 (Energy Effects)

The FMCSA analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a ''significant energy action'' under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 391

Motor carriers, Reporting and recordkeeping requirements, Safety.

In consideration of the foregoing, FMCSA proposes to amend title 49, Code of Federal Regulations, Chapter III as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 322, 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1767; and 49 CFR 1.73.

2. Amend § 391.23 by revising (m)(2) introductory text, (m)(2)(i) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(m) * * *

(2) *Exception.* For drivers required to have a commercial driver's license under part 383 of this chapter:

(i) Beginning January 30, 2014, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

* * * * *

(ii) Until January 30, 2014, if a driver operating in non-excepted, interstate commerce has no medical certification status information on the CDLIS MVR obtained from the current State driver licensing agency, the employing motor carrier may accept a medical examiner's certificate issued to that driver, and

place a copy of it in the driver qualification file before allowing the driver to operate a CMV in interstate commerce.

3. Revise § 391.41(a)(2)(i) to read as follows:

§ 391.41 Physical qualifications for drivers.

(a) * * *

(2) * * *

(i) Beginning January 30, 2014, a driver required to have a commercial driver's license under part 383 of this chapter, and who submitted a current medical examiner's certificate to the State in accordance with § 383.71(h) of this chapter documenting that he or she meets the physical qualification requirements of this part, no longer needs to carry on his or her person the medical examiner's certificate specified at § 391.43(h), or a copy for more than 15 days after the date it was issued as valid proof of medical certification.

* * * * *

Issued on: June 8, 2011.

Anne S. Ferro,

Administrator, Federal Motor, Carrier Safety Administration.

[FR Doc. 2011–14653 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 76, No. 114

Tuesday, June 14, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Bureau for Democracy, Conflict and Humanitarian Assistance; Office of Food for Peace, Announcement of Request for Applications for Title II Non-Emergency Food Aid Programs Targeting Pastoral Areas in Ethiopia

Notice

Notice is hereby given that the Request for Applications for Title II Non-Emergency Food Aid Programs Targeting Pastoral Areas in Ethiopia will be available to interested parties for general viewing.

For individuals who wish to review, the Request for Applications for Title II Non-Emergency Food Aid Programs Targeting Pastoral Areas in Ethiopia will be available via the Food for Peace Web site *http://www.usaid.gov/our_work/humanitarian_assistance/ffp/progpolicy.html* on or about June 10, 2011. Interested parties can also receive a copy of the Request for Applications for Title II Non-Emergency Food Aid Programs Targeting Pastoral Areas in Ethiopia by contacting the Office of Food for Peace, U.S. Agency for International Development, RRB 7.06–085, 1300 Pennsylvania Avenue, NW., Washington, DC 20523–7600.

Dale Skoric,

Division Chief, Policy and Technical Division, Office of Food for Peace, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 2011–14636 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Notice of Proposed Additional Information Collection: Advisory Committee and Research and Promotion Background Information

AGENCY: Office of the Secretary, USDA.

ACTION: Revision and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the U.S. Department of Agriculture's (USDA) intention to request a revision to a currently approved information collection of the Advisory Committee and Research and Promotion Background Information to include Race, Ethnicity, National Origin, Gender and Disability Status.

DATES: Comments on this notice must be received by August 15, 2011 to be assured of consideration.

Additional Information or Comments: Contact Sherry Taylor, Office of the Secretary, White House Liaison Office, U.S. Department of Agriculture, 1400 Independence Ave., SW., the Whitten Building, Room 507–A, Mail Stop–0112, Washington, DC 20250; office phone: 202–720–2406 or fax: 202–720–9286; e-mail: *USDAappointmentcomments@osec.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Advisory Committee and Research and Promotion Background Information.

OMB Number: 0505–0001.

Expiration Date of Approval: July 31, 2012.

Type of Request: Revision of a currently approved information collection.

Abstract: The primary objective is to determine the qualifications, suitability and availability of a candidate to serve on advisory committees and/or research and promotion boards. The information will be used to both conduct background clearances on the candidates to the boards and committees and to compile annual reports on committee members.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals or households.

Estimated Number of Respondents: 2300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 1150.

Comments are invited on: (1) 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) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Sherry Taylor, Office of the White House Liaison, 1400 Independence Avenue, SW., the Whitten Building, Room 507–A, Washington, DC 20250; fax: 202–720–9286; or e-mail: *USDAappointment comments@osec.usda.gov.* Comments submitted by mail must be postmarked 10 business days prior to the deadline to ensure timely receipt.

All comments received will be available for public inspection during regular business hours at the same address.

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

Signed in Washington, DC on May 31, 2011.

Thomas J. Vilsack,

Secretary of Agriculture.

[FR Doc. 2011–14703 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Funding Opportunity Title: Risk Management Education and Outreach Partnerships Program; Announcement Type: Announcement of Availability of Funds and Request for Application for Competitive Cooperative Partnership Agreements

Catalog of Federal Domestic Assistance Numbers (CFDAs): 10.455 and 10.459.

DATES: All applications, which must be submitted electronically through Grants.gov, must be received by 11:59 p.m. Eastern Time on July 14, 2011. Hard copy applications shall NOT be accepted.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), operating through the Risk Management Agency (RMA), announces its intent to award approximately $3,500,000 (subject to availability of funds) to fund the Risk Management Education and Outreach Partnerships Program. This Request for Applications (RFA) Announcement is for a combination of the programs previously known as the ''Commodity Partnerships for Small Agricultural Risk Management Education Sessions'' and the ''Community Outreach and Assistance Partnerships Program.'' The purpose of this combined cooperative partnership agreements program is to deliver crop insurance education and risk management training to U.S. agricultural producers to assist them in identifying and managing production, marketing, legal, financial and human risk. The program gives priority to: (1) Educating producers of crops currently not insured under Federal crop insurance, specialty crops, and underserved commodities, including livestock and forage; and (2) providing collaborative outreach and assistance programs for limited resource, socially disadvantaged and other traditionally underserved farmers and ranchers. The minimum award for any cooperative partnership agreement is $20,000. The maximum award for any cooperative partnership agreement is $100,000. The cooperative partnership agreements will be awarded on a competitive basis up to one year from the date of the award. Awardees must demonstrate non-financial benefits from a cooperative partnership agreement and must agree to the substantial involvement of RMA in the project. Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs:—CFDA No. 10.458 (Crop Insurance Education in Targeted States). Prospective applicants should carefully examine and compare the notices of each announcement.

The collections of information in this Announcement have been approved by OMB under control numbers 0563–0066 and 0563–0067.

This Announcement Consists of Eight Sections

Section I—Funding Opportunity Description
A. Legislative Authority
B. Background
C. Definition of Priority Commodities
D. Project Goal
E. Purpose
Section II—Award Information
A. Type of Application
B. Funding Availability
C. Location and Target Audience
D. Minimum and Maximum Award
E. Project Period
F. Description of Agreement—Awardee Tasks
G. RMA Activities
H. Other Tasks
Section III—Eligibility Information
A. Eligible Applicants
B. Cost Sharing or Matching
C. Other—Non-Financial Benefits
Section IV—Application and Submission Information
A. Electronic Application Package
B. Content and Form of Application Submission
C. Funding Restrictions
D. Limitation on Use of Project Funds for Salaries and Benefits
E. Indirect Cost Rates
F. Other Submission Requirements
G. Acknowledgement of Applications
Section V—Application Review Information
A. Criteria
B. Selection and Review Process
Section VI—Award Administration Information
A. Award Notices
B. Administrative and National Policy Requirements
1. Requirement to Use Program Logo
2. Requirement to Provide Project Information to an RMA-selected Representative
3. Private Crop Insurance Organizations and Potential Conflicts of Interest
4. Access to Panel Review Information
5. Confidential Aspects of Applications and Awards
6. Audit Requirements
7. Prohibitions and Requirements Regarding Lobbying
8. Applicable OMB Circulars
9. Requirement to Assure Compliance with Federal Civil Rights Laws
10. Requirement to Participate in a Post Award Teleconference
11. Requirement to Submit Educational Materials to the National AgRisk Education Library
12. Requirement to Submit Proposed Results to the National AgRisk Education Library
13. Requirement to Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak
C. Reporting Requirements
Section VII—Agency Contact
Section VIII—Additional Information
A. Required Registration with the Central Contract Registry (CCR) for Submission of Proposals
B. Related Programs

Full Text of Announcement

I. Funding Opportunity Description

A. Legislative Authority

The Risk Management Education and Outreach Partnership Program is authorized under section 522(d)(3)(F) of the Federal Crop Insurance Act (Act) (7 U.S.C. 1522(d)(3)(F)).

B. Background

RMA promotes and regulates sound risk management solutions to improve the economic stability of American agriculture. On behalf of FCIC, RMA does this by offering Federal crop insurance products through a network of private-sector partners, overseeing the creation of new risk management products, seeking enhancements in existing products, ensuring the integrity of crop insurance programs, offering programs aimed at equal access and participation of underserved communities, and providing risk management education and information.

One of RMA's strategic goals is to ensure that its customers are well informed as to the risk management solutions available. This educational goal is supported by section 522(d)(3)(F) of the Federal Crop Insurance Act (FCIA) (7 U.S.C. 1522(d)(3)(F), which authorizes FCIC funding for risk management training and informational efforts for agricultural producers through the formation of partnerships with public and private organizations. With respect to such partnerships, priority is to be given to reaching producers of Priority Commodities, as defined below. A project is considered as giving priority to Priority Commodities if 75 percent of the educational and training activities of the project are directed to producers of any one of the three classes of commodities listed in the definition of Priority Commodities or any combination of the three classes.

C. Definition of Priority Commodities

For purposes of this program, Priority Commodities are defined as:

1. *Agricultural commodities covered by (7 U.S.C. 7333).* Commodities in this group are commercial crops that are not covered by catastrophic risk protection crop insurance, are used for food or fiber (except livestock), and specifically include, but are not limited to, floricultural, ornamental nursery, Christmas trees, turf grass sod, aquaculture (including ornamental fish), and industrial crops.

2. *Specialty crops.* Commodities in this group may or may not be covered under a Federal crop insurance plan and include, but are not limited to, fruits, vegetables, tree nuts, syrups, honey, roots, herbs, and highly specialized varieties of traditional crops.

3. *Underserved commodities.* This group includes: (a) Commodities, including livestock and forage, that are

covered by a Federal crop insurance plan but for which participation in an area is below the national average; and (b) commodities, including livestock and forage, with inadequate crop insurance coverage.

D. Project Goal

The goal of this program is to ensure that ''* * * producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools.''

E. Purpose

The purpose of the Risk Management Education and Outreach Partnerships Program is to provide U.S. farmers and ranchers with training and information opportunities to be able to understand:

1. The kinds of risks addressed by existing and emerging risk management tools;
2. The features and appropriate use of existing and emerging risk management tools; and
3. How to make sound risk management decisions.

For the 2011 fiscal year, the FCIC Board of Directors and the FCIC Manager are seeking projects that address one or more of the Priority Commodities.

In addition, the application must clearly designate that education or training will be provided on at least one (1) of the Special Emphasis Topics listed under Category 1 below. Applications that do not include at least one (1) Special Emphasis Topic from Category 1 will not be considered for funding.

Category 1. Projects That Concentrate on Risk Management Education and Outreach

Special Emphasis Topics:

Production: AGR and AGR-Lite; Livestock Gross Margin Dairy; Pasture, Rangeland, Forage Rainfall and/or Vegetative Index; Common Crop Insurance Policy Basic Provisions (''COMBO''); Enterprise Units; Specialty Crops; Prevented Planting; or Other Existing Crop Insurance Programs; Irrigation; Erosion Control Measures; Good Farming Practices; Wildfire Management; Forest Management; and Range Management.

Legal: Legal and Succession Planning;

Marketing: Marketing Strategies; Farm Products Branding; Farmers Markets;

Financial: Financial Tools and Planning; Farm Management Strategies;

Human: Farm Labor; Farm Safety; Food Safety, Risk Management Education to Students.

In addition, the application must clearly demonstrate that education or training will be provided to at least one (1) of the Producer Types listed under Category 2 below. Applications that do not include at least one (1) of the Producer Types listed under Category 2 will not be considered for funding.

Category 2. Projects That Concentrate on Producer Type

Producer Types:

Producers and Ranchers;
Producers located in Arkansas, Mississippi and Georgia;
New and Beginning Farmers;
Women Producers and Ranchers;
Hispanic Producers and Ranchers;
African American Producers and Ranchers;
Native American Producers and Ranchers;
Limited Resource Producers and Ranchers;
Asian American and Pacific Islander Producers and Ranchers;
Transitional Farmers and Ranchers;
Senior Farmers and Ranchers;
Small Acreage Producers;
Specialty Crop Producers;
Returning Military Veterans Producers and Ranchers.

II. Award Information

A. Type of Application

Only electronic applications will be accepted and they must be submitted through Grants.gov. Hard copy applications will NOT be accepted. Applications submitted to the Risk Management Education and Outreach Partnerships Program are new applications: There are no renewals. All applications will be reviewed competitively using the selection process and evaluation criteria described in Section V—Application Review Process. Each award will be designated as a Cooperative Partnership Agreement, which will require substantial involvement by RMA.

B. Funding Availability

There is no commitment by USDA to fund any particular application. Approximately $3,500,000 is expected to be available in fiscal year 2011 but it is possible that this amount may be reduced or not funded. In the event that all funds available for this program are not obligated after the maximum number of agreements are awarded or if additional funds become available, these funds may, at the discretion of the Manager of FCIC, be used to award additional applications that score highly by the technical review panel or allocated pro-rata to awardees for use in broadening the size or scope of awarded projects, if agreed to by the awardee. In the event that the Manager of FCIC determines that available RMA resources cannot support the administrative and substantial involvement requirements of all agreements recommended for funding, the Manager may elect to fund fewer agreements than the available funding might otherwise allow. All awards will be made and agreements finalized no later than September 30, 2011.

C. Location and Target Audience

RMA Regional Offices and the States serviced within each RMA Region are listed below. Staff from the respective RMA Regional Offices will provide substantial involvement for projects conducted within the Region.

Billings, Montana Regional Office: (MT, ND, SD, and WY)
Davis, California Regional Office: (AZ, CA, HI, NV, and UT)
Jackson, Mississippi Regional Office: (AR, KY, LA, MS, and TN)
Oklahoma City, Oklahoma Regional Office: (NM, OK, and TX)
Raleigh, North Carolina Regional Office: (CT, DE, MA, MD, ME, NC, NH, NJ, NY, PA, RI, VA, VT, and WV)
Spokane, Washington Regional Office: (AK, ID, OR, and WA)
Springfield, Illinois Regional Office: (IL, IN, MI, and OH)
St. Paul, Minnesota Regional Office: (IA, MN, and WI)
Topeka, Kansas Regional Office: (CO, KS, MO, and NE)
Valdosta, Georgia Regional Office: (AL, FL, GA, SC, and Puerto Rico)

Each application must clearly designate the RMA Region where educational activities will be conducted in the application narrative in block 12 of the SF–424 form. Applications without this designation will be rejected. Priority will be given to producers of Priority Commodities and Special Emphasis Topics previously identified in this Announcement. Applicants proposing to conduct educational activities in states served by more than one RMA Regional Office must submit a separate application for each RMA Region. Single applications proposing to conduct educational activities in states served by more than one RMA Region will be rejected. Applications serving Tribal Nations will be accepted and managed from the RMA Regional office serving the designated Tribal Office.

D. Minimum and Maximum Award

Any application that requests Federal funding of less than $20,000 or more than $100,000 for a project will be rejected. RMA also reserves the right to

fund successful applications at an amount less than requested if it is judged that the application can be implemented at a lower funding level.

E. Project Period

Projects will be funded for a period of up to one year from the project starting date.

F. Description of Agreement Award—Awardee Tasks

In conducting activities to achieve the purpose and goal of this program in a designated RMA Region, the awardee will be responsible for performing the following tasks:

1. Develop and conduct a promotional program. This program will include activities using media, newsletters, publications, or other appropriate informational dissemination techniques that are designed to: (a) Raise awareness for crop insurance and risk management; (b) inform producers of the availability of crop insurance and risk management tools; and (c) inform producers and agribusiness leaders in the designated RMA Region of training and informational opportunities.

2. Deliver crop insurance and risk management training as well as informational opportunities to agricultural producers and agribusiness professionals in the designated RMA Region. This will include organizing and delivering educational activities using the instructional materials assembled by the grantee to meet the local needs of agricultural producers. Activities should be directed primarily to agricultural producers, but may include those agribusiness professionals that have frequent opportunities to advise producers on risk management tools and decisions.

3. Document all educational activities conducted under the cooperative partnership agreement and the results of such activities, including criteria and indicators used to evaluate the success of the program. The awardee will also be required to provide information to RMA as requested for evaluation purposes.

G. RMA Activities

FCIC, working through RMA, will be substantially involved during the performance of the funded project through RMA's ten Regional Offices. Potential types of substantial involvement may include, but are not limited to, the following activities.

1. Collaborate with the awardee in assembling, reviewing, and approving crop insurance and risk management materials for producers in the designated RMA Region.

2. Collaborate with the awardee in reviewing and approving a promotional program for raising awareness for crop insurance and risk management and for informing producers of training and informational opportunities in the RMA Region.

3. Collaborate with the awardee on the delivery of education to producers and agribusiness leaders in the RMA Region. This will include: (a) Reviewing and approving in advance all producer and agribusiness leader educational activities; (b) advising the project leader on technical issues related to crop insurance education and information; and (c) assisting the project leader in informing crop insurance professionals about educational activity plans and scheduled meetings.

4. Conduct an evaluation of the performance of the awardee in meeting the deliverables of the project.

Applications that do not address substantial involvement by RMA will be rejected.

H. Other Tasks

In addition to the specific, required tasks listed above, the applicant may propose additional tasks that would contribute directly to the purpose of this program. For any proposed additional task, the applicant must identify the objective of the task, the specific subtasks required to meet the objective, specific time lines for performing the subtasks, and the specific responsibilities of the applicant and any entities working with the applicant in the development or delivery of the project. The applicant must also identify specific ways in which RMA would have substantial involvement in the proposed project task.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants include: State Departments of Agriculture, State Cooperative Extension Services; Federal, State, or tribal agencies; community based organizations; nongovernmental organizations; junior and four-year colleges or universities or foundations maintained by a college or university; private for-profit organizations; faith-based organizations and other appropriate partners with the capacity to lead a local program of crop insurance and risk management education for producers in an RMA Region.

Individuals are not eligible applicants. Although an applicant may be eligible to compete for an award based on its status as an eligible entity, other factors may exclude an applicant from receiving Federal assistance under this program governed by Federal law and regulations (e.g. debarment and suspension; a determination of non-performance on a prior contract, cooperative partnership agreement, or grant; or a determination of a violation of applicable ethical standards. Applications in which the applicant or any of the partners are ineligible or excluded persons shall be rejected in their entirety.

B. Cost Sharing or Matching

Although RMA prefers cost sharing by the applicant, this program has neither a cost sharing nor a matching requirement.

C. Other—Non-financial Benefits

To be eligible, applicants must also be able to demonstrate that they will receive a non-financial benefit as a result of a cooperative partnership agreement. Non-financial benefits must accrue to the applicant and must include more than the ability to provide employment income to the applicant or for the applicant's employees or the community. The applicant must demonstrate that performance under the cooperative partnership agreement will further the specific mission of the applicant (such as providing research or activities necessary for graduate or other students to complete their educational program). Applications that do not demonstrate a non-financial benefit will be rejected.

IV. Application and Submission Information

A. Electronic Application Package

Only electronic applications will be accepted and they must be submitted via Grants.gov to the Risk Management Agency in response to this Announcement. Prior to preparing an application, it is suggested that the Project Director (PD) first contact an Authorized Representative (AR) (also referred to as Authorized Organizational Representative or AOR) to determine if the organization is prepared to submit electronic applications through Grants.gov. If the organization is not prepared, the AR should see *http://www.grants.gov/applicants/get_registered.jsp* for steps for preparing to submit applications through Grants.gov.

The steps to access application materials are as follows:

1. In order to access, complete, and submit applications, applicants must download and install a version of Adobe Reader compatible with Grants.gov. This software is essential to apply for

RMA Federal awards. For basic system requirements and download instructions, please see *http://www.grants.gov/help/download_software.jsp.* To verify that you have a compatible version of Adobe Reader, Grants.gov established a test package that will assist you in making that determination. Grants.gov Adobe Versioning Test Package is located at: *http://www.grants.gov/applicants/AdobeVersioningTestOnly.jsp.*

2. The application package must be obtained via Grants.gov, go to *http://www.grants.gov*, click on ''Apply for Grants'' in the left-hand column, click on ''Step 1: Download a Grant Application Package and Instructions,'' enter the funding opportunity number USDA–RMA–RME–SSGP–002011 in the appropriate box and click ''Download Package.'' From the search results, click ''Download'' to access the application package.

Applicants who need assistance in accessing the application package (*e.g.* downloading or navigating Adobe forms) should refer to resources available on the Grants.gov Web site first (*http://grants/gov/*). Grants.gov assistance is also available as follows: Grants.gov customer support, *Toll Free:* 1–800–518–4726; *Business Hours:* 24 Hours a day; *Email: support@grants.gov.*

B. Content and Form of Application Submission

The title of the application must include the Special Emphasis Topic(s) under Category 1; the Producer Type(s) under Category 2; and the RMA Region.

A complete and valid application must include the following:

1. A completed OMB Standard Form 424, ''Application for Federal Assistance.''

2. A completed OMB Standard Form 424–A, ''Budget Information—Non-construction Programs.'' Federal funding requested (the total of direct and indirect costs) must not exceed $100,000.

3. A completed OMB Standard Form 424–B, ''Assurances, Non-constructive Programs.''

4. An Executive Summary (One page) and Proposal Narrative (Not to Exceed 10 single-sided pages in Microsoft Word), which will also include a Statement of Work as specified in section V.A. of this Announcement.

5. Budget Narrative (in Microsoft Excel) describing how the categorical costs listed on the SF 424–A are derived. The budget narrative should provide enough detail for reviewers to easily understand how costs were determined and how they relate to the goals and objectives of the project.

6. Partnering Plan, if applicable, that includes how each partner shall aid in carrying out the project goal providing specific tasks. Letters of commitment from individuals and/or groups must be included in the Partnering Plan, and these letters must include the specific tasks they have agreed to do with the applicant. A completed and signed OMB Standard Form LLL, Disclosure of Lobbying Activities.

7. A completed and signed AD–1049, Certification Regarding Drug-Free Workplace.

* Applications that do not include items 1–7 above shall be considered incomplete, shall not receive further consideration, and shall be rejected.

The percentage of each person's time devoted to the project must be identified in the application. Applicants must list all current public or private employment arrangements or financial support associated with the project or any of the personnel that are part of the project, regardless of whether such arrangements or funding constitute part of the project under this Announcement (supporting agency, amount of award, effective date, expiration date, expiration date of award, etc.). An application submitted under this RFA that duplicates or overlaps substantially with any application already reviewed and funded (or to be funded) by any other organization or agency, including but not limited to other RMA, USDA, and Federal government programs, shall not be funded under this program. The application package from Grants.gov contains a document called the *Current and Pending Report.* On the Current and Pending Report you must state for this fiscal year if this application is a duplicate application or overlaps substantially with another application already submitted to or funded by another USDA Agency, including RMA, or other private organization. RMA reserves the right to reject your application based on the review of this information. The percentage of time for both ''Current'' and ''Pending'' projects must not exceed 100 percent of time committed.

C. Funding Restrictions

Cooperative partnership agreement funds may not be used to:

a. Plan, repair, rehabilitate, acquire, or construct a building or facility including a processing facility;

b. Purchase, rent, or install fixed equipment;

c. Repair or maintain privately owned vehicles;

d. Pay for the preparation of the cooperative partnership agreement application;

e. Fund political activities;

f. Purchase alcohol, food, beverage, gifts cards, or entertainment;

g. Lend money to support farming or agricultural business operation or expansion;

h. Pay costs incurred prior to receiving a cooperative partnership agreement; or

i. Fund any activities prohibited in 7 CFR Parts 3015 and 3019, as applicable.

D. Limitation on Use of Project Funds for Salaries and Benefits

Total costs for salary and benefits allowed for projects under this Announcement shall be limited to not more than 70 percent reimbursement of the funds awarded under the cooperative partnership agreement. The reasonableness of the total costs for salary and benefits allowed for projects under this Announcement shall be reviewed and considered by RMA as part of the application review process. Applications for which RMA does not consider the salary and benefits reasonable for the proposed application shall be rejected, or shall only be offered a cooperative agreement upon the condition of changing the salary and benefits structure to one deemed appropriate by RMA for that. The goal of the Risk Management Education and Outreach Partnerships Program is to maximize the use of the limited funding available for crop insurance risk management education for producers of Priority Commodities, and Special Emphasis Topics.

E. Indirect Cost Rates

1. Indirect costs allowed for projects submitted under this Announcement shall be limited to ten (10) percent of the total direct cost of the cooperative partnership agreement. Therefore, when preparing budgets, applicants should limit their requests for recovery of indirect costs to the lesser of their institution's official negotiated indirect cost rate or 10 percent of the total direct costs.

2. RMA reserves the right to negotiate final budgets with successful applicants.

F. Other Submission Requirements

When the applicant enters the Grants.gov site, the applicant will find information about submitting an application electronically through the site. To use Grants.gov, all applicants must have a Dun and Bradstreet Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform.* Therefore,

potential applicants should verify that they have a DUNS number or take the steps needed to obtain one. For information about how to obtain a DUNS number, go to *http://www.grants.gov.* Please note that the registration may take up to 14 business days to complete.

Applicants are responsible for ensuring that RMA receives a complete application package by the closing date and time. *The agency strongly encourages applicants to submit applications well before the deadline* to allow time for correction of technical errors identified by Grants.gov. Any application package received after the deadline shall be rejected.

G. Acknowledgement of Applications

Receipt of timely applications will be acknowledged by e-mail, whenever possible. Therefore, applicants are encouraged to provide e-mail addresses in their applications. If an e-mail address is not indicated on an application, timely receipt will be acknowledged by letter. There shall be no notification of incomplete, unqualified or unfunded applications until after the awards have been made. When received by RMA, applications shall be assigned an identification number. This number will be communicated to applicants in the acknowledgement of receipt of applications. An application's identification number should be referenced in all correspondence regarding the application. If the applicant does not receive an acknowledgement within 15 days of the submission deadline, the applicant should notify RMA's point of contact indicated in Section VII, Agency Contact.

V. Application Review Information

A. Criteria

Applications submitted under the Risk Management Education and Outreach Partnerships Program shall be evaluated within each RMA Region according to the following criteria:

Project Impacts—Maximum 20 Points Available

The applicant must demonstrate that the project benefits to producers, farmers and ranchers warrant the funding requested. Applicants shall be scored according to the extent they can: (a) Identify the specific actions producers, farmers and ranchers will likely be able to take as a result of the educational activities described in the Statement of Work; (b) identify the specific measures for evaluating results that will be employed in the project; (c) reasonably estimate the total number of producers, farmers and ranchers reached through the various methods and educational activities described in the Statement of Work; (d) identify the number of meetings to be held; (e) provide an estimate of the number of training hours to be held; and (f) justify such estimates with clear specifics. Reviewers' scoring shall be based on the scope and reasonableness of the applicant's clear descriptions of specific expected actions producers will accomplish, and well-designed methods for measuring the project's results and effectiveness. With respect to the expected producer, farmer and rancher actions and the measurement of results, the applicant must include how the project will:

1. Increase the understanding of crop insurance and risk management tools;

2. Assist producers, farmers and ranchers in evaluating the feasibility of implementing various risk management options;

3. Assist producers, farmers and ranchers in developing risk management plans and strategies; and

4. Assist producers, farmers and ranchers in deciding on and implementing a specific course of actions (e.g., participation in crop insurance programs or implementation of other risk management actions).

Statement of Work—Maximum 20 Points Available

The applicant must produce a clear and specific Statement of Work for the project. For each of the tasks contained in Section II—Award Information, the applicant must identify and describe specific subtasks, responsible entities, expected completion dates, RMA substantial involvement, and deliverables that will further the purpose of this program. Applicants shall be scored higher to the extent that the Statement of Work is specific, measurable, reasonable, has specific deadlines for the completion of subtasks, relates directly to the required activities and the program purpose described in this Announcement, which is to provide producers with training and informational opportunities so that the producers will be better able to use financial management, crop insurance, marketing contracts, and other existing and emerging risk management tools. All narratives should give estimates of how many producers, farmers and ranchers will be reached through this project.

Project Management—Maximum 20 Points Available

The applicant must demonstrate an ability to implement sound and effective project management practices. Higher scores shall be awarded to applicants that can demonstrate organizational skills, leadership, and experience in delivering services or programs that assist agricultural producers in the respective RMA Region. The project manager must demonstrate that he/she has the capability to accomplish the project goal and purpose stated in this Announcement by: (a) Having a current or previous working relationship with the farm community in the designated RMA Region of the application, including being able to recruit approximately the number of producers to be reached in the application; or (b) having established the capacity to partner with and gain the support of grower organizations, agribusiness professionals, and agribusiness leaders locally to aid in carrying out a program of education and information, including being able to recruit approximately the number of producers to be reached in this application. Applicants are encouraged to designate an alternate Project Leader in the event the Project Leader is unable to finish the project. Applicants that shall employ, or have access to, personnel who have experience in directing local educational programs that benefit agricultural producers in the respective RMA Region shall receive higher rankings.

Budget Appropriateness and Efficiency—Maximum 10 Points Available

Applicants must provide a detailed budget summary that clearly explains and justifies costs associated with the project. Applicants shall receive higher scores to the extent that they can demonstrate a fair and reasonable use of funds appropriate for the project and a budget that contains the estimated cost of reaching each individual producer, farmer and rancher.

Priority Commodity—Maximum 15 Points Available

The applicant can submit projects that are not related to Priority Commodities. However, only projects relating to Priority Commodities shall receive these points.

Special Emphasis—Maximum of 15 Points Available

Projects that include more than one Special Emphasis Topics shall be eligible for the most points.

Bonus Points for Diversity Partnering—Maximum of 15 Points Available

RMA is focused on adding diversity to this program. Management may add up to an additional 15 points to the final paneled score of any submission demonstrating a partnership with another group or entity that is a member of a specific population listed in Section I.E., *Category 2—Projects that concentrate on Producer Type.*

B. Review and Selection Process

Applications shall be evaluated using a two-part process. First, each application shall be screened by RMA personnel to ensure that it meets the requirements in this Announcement. Applications that do not meet the requirements of this Announcement or that are incomplete shall not receive further consideration during the next process. Applications that meet Announcement requirements will be sorted into the RMA Region in which the applicant proposes to conduct the project and shall be presented to a review panel for consideration.

Second, the review panel will meet to consider and discuss the merits of each application. The panel will consist of not less than three independent reviewers. Reviewers shall be drawn from USDA, other Federal agencies, and public and private organizations, as needed. After considering the merits of all applications within an RMA Region, panel members shall score each application according to the criteria and point values listed above. The panel shall then rank each application against others within the RMA Region according to the scores received.

The review panel shall report the results of the evaluation to the Manager of FCIC. The panel's report shall include the recommended applicants to receive cooperative partnership agreements for each RMA Region. Funding shall not be provided for an application receiving a score less than 60. Funding shall not be provided for an application that is highly similar to a higher-scoring application in the same RMA Region. Highly similar is one that proposes to reach the same producers, farmers and ranchers likely to be reached by another applicant that scored higher by the panel and the same general educational material is proposed to be delivered.

An organization, or group of organizations in partnership, may apply for funding under other FCIC or RMA programs, in addition to the program described in this Announcement. However, if the Manager of FCIC determines that an application recommended for funding is sufficiently similar to a project that has been funded or has been recommended to be funded under another RMA or FCIC program, then the Manager may elect not to fund that application in whole or in part. The Manager of FCIC shall make the final determination on those applications that will be awarded funding.

VI. Award Administration Information

A. Award Notices

The award document shall provide pertinent instructions and information including, at a minimum, the following:

(1) Legal name and address of performing organization or institution to which the Manager of FCIC has issued an award under the terms of this request for applications;

(2) Title of project;

(3) Name(s) and employing institution(s) of Project Directors chosen to direct and control approved activities;

(4) Identifying award number assigned by RMA;

(5) Project period, specifying the amount of time RMA intends to support the project without requiring recompeting for funds;

(6) Total amount of RMA financial assistance approved by the Manager of FCIC during the project period;

(7) Legal authority(ies) under which the award is issued;

(8) Appropriate Catalog of Federal Domestic Assistance (CFDA) numbers;

(9) Applicable award terms and conditions (*see http://www.rma.usda.gov/business/awards/awardterms.html* to view RMA award terms and conditions);

(10) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the award; and

(11) Other information or provisions deemed necessary by RMA to carry out its respective awarding activities or to accomplish the purpose of a particular award.Following approval by the Manager of FCIC of the applications to be selected for funding, project leaders whose applications have been selected for funding will be notified. Within the limit of funds available for such a purpose, the Manager of FCIC shall enter into cooperative partnership agreements with those selected applicants.

After a cooperative partnership agreement has been signed, RMA shall extend to awardees, in writing, the authority to draw down funds for the purpose of conducting the activities listed in the agreement. All funds provided to the applicant by FCIC must be expended solely for the purpose for which the funds are obligated in accordance with the approved cooperative partnership agreement and budget, the regulations, the terms and conditions of the award, and the applicability of Federal cost principles. No commitment of Federal assistance beyond the project period is made or implied for any award resulting from this notice.

Notification of denial of funding shall be sent to applicants after final funding decisions have been made and the awardees announced publicly.

B. Administrative and National Policy Requirements

1. Requirement To Use Program Logo

Applicants awarded cooperative partnership agreements shall be required to use a program logo and design provided by RMA for all instructional and promotional materials, when deemed appropriate.

2. Requirement To Provide Project Information to an RMA-selected Representative

Applicants awarded cooperative partnership agreements may be required to assist RMA in evaluating the effectiveness of its educational programs by providing documentation of educational activities and related information to any representative selected by RMA for program evaluation purposes.

3. Private Crop Insurance Organizations and Potential Conflicts of Interest

Private organizations that are involved in the sale of Federal crop insurance (approved insurance providers and agencies), or that have financial ties to such organizations, are eligible to apply for funding under this Announcement. However, such entities shall not be allowed to receive funding to conduct activities that would otherwise be required under a Standard Reinsurance Agreement or any other agreement in effect between FCIC and the entity. Also, such entities shall not be allowed to receive funding to conduct activities that could be perceived by producers as promoting one approved insurance provider or agencies services or products over another's. If applying for funding, such organizations are encouraged to be sensitive to potential conflicts of interest and to describe in their application the specific actions they will take to avoid actual and perceived conflicts of interest.

4. Access to Panel Review Information

Upon written request from the applicant, scores from the evaluation

panel, not including the identity of reviewers, shall be sent to the applicant after the review and awards process has been completed.

5. Confidential Aspects of Applications and Awards

The names of applicants, the names of individuals identified in the applications, the content of applications, and the panel evaluations of applications shall all be kept confidential, except to those involved in the review process, to the extent permitted by law. In addition, the identities of review panel members shall remain confidential throughout the entire review process and shall not be released to applicants. At the end of the fiscal year, names of panel members shall be made available. However, panelists shall not be identified with the review of any particular application.

When an application results in a cooperative partnership agreement, that agreement becomes a part of the official record of RMA transactions, available to the public upon specific request. Information that the Secretary of Agriculture determines to be of a confidential, privileged, or proprietary nature shall be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to be considered confidential, privileged, or proprietary should be clearly marked within an application, including the basis for such designation. The original copy of an application that does not result in an award shall be retained by RMA for a period of one year. Other copies shall be destroyed. Copies of applications not receiving awards shall be released only with the express written consent of the applicant or to the extent required by law. An application may be withdrawn at any time prior to award.

6. Audit Requirements

Applicants awarded cooperative partnership agreements are subject to audit.

7. Prohibitions and Requirements Regarding Lobbying

All cooperative agreements shall be subject to the requirements of 7 CFR Part 3015, ''Uniform Federal Assistance Regulations.'' A signed copy of the certification and disclosure forms must be submitted with the application and are available at the address and telephone number listed in Section VII, Agency Contact.

Departmental regulations published at 7 CFR Part 3018 imposes prohibitions and requirements for disclosure and certification related to lobbying on awardees of Federal contracts, grants, cooperative partnership agreements and loans. It provides exemptions for Indian Tribes and tribal organizations. Current and prospective awardees, and any subcontractors, are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative partnership agreement or loan. In addition, for each award action in excess of $100,000 ($150,000 for loans) the law requires awardees and any subcontractors to complete a certification in accordance with Appendix A to Part 3018 and a disclosure of lobbying activities in accordance with Appendix B to Part 3018: The law establishes civil penalties for non-compliance.

8. Applicable OMB Circulars

All cooperative partnership agreements funded as a result of this notice shall be subject to the requirements contained in all applicable OMB circulars.

9. Requirement To Assure Compliance With Federal Civil Rights Laws

Awardees and all partners/collaborators of all cooperative agreements funded as a result of this notice are required to know and abide by Federal civil rights laws, which include, but are not limited to, Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), and 7 CFR Part 15. RMA requires that awardees submit an Assurance Agreement (Civil Rights), assuring RMA of this compliance prior to the beginning of the project period.

10. Requirement To Participate in a Post Award Teleconference

RMA requires that project leaders participate in a post award teleconference, if conducted, to become fully aware of agreement requirements and for delineating the roles of RMA personnel and the procedures that shall be followed in administering the agreement and shall afford an opportunity for the orderly transition of agreement duties and obligations if different personnel are to assume post-award responsibility.

11. Requirement To Submit Educational Materials to the National AgRisk Education Library

RMA requires that project leaders upload digital copies of all risk management educational materials developed because of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting. RMA shall be clearly identified as having provided funding for the materials.

12. Requirement To Submit Proposed Results to the National AgRisk Education Library

RMA requires that project leaders submit results of the project to the National AgRisk Education Library (*http://www.agrisk.umn.edu/*) for posting.

13. Requirement To Submit a Project Plan of Operation in the Event of a Human Pandemic Outbreak

RMA requires that project leaders submit a project plan of operation in case of a human pandemic event. The plan should address the concept of continuing operations as they relate to the project. This should include the roles, responsibilities, and contact information for the project team and individuals serving as back-ups in case of a pandemic outbreak.

C. Reporting Requirements

Awardees shall be required to submit quarterly progress reports using the Performance Progress Report (SF–PPR) as the cover sheet, and quarterly financial reports (OMB Standard Form 425) throughout the project period, as well as a final program and financial report not later than 90 days after the end of the project period. The quarterly progress reports and final program reports MUST be submitted through the Results Verification System. The Web site address is *http://www.agrisk.umn.edu/RMA/Reporting.*

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: USDA–RMA–RME, phone: 202–720–0779, e-mail: *RMA.Risk-Ed@rma.usda.gov.* You may also obtain information regarding this announcement from the RMA Web site at: *http://www.rma.usda.gov/aboutrma/agreements.*

VIII. Additional Information

A. Required Registration With the Central Contract Registry (CCR) for Submission of Proposals

Under the Federal Funding Accountability and Transparency Act of 2006, the applicant must comply with the additional requirements set forth in Attachment A regarding the Dun and Bradstreet Universal Numbering System (DUNS) Requirements and the CCR Requirements found at 2 CFR Part 25. For the purposes of this RFA, the term ''you'' in Attachment A shall mean ''applicant''. The applicant shall comply

with the additional requirements set forth in Attachment B regarding Subawards and Executive Compensation. For the purpose of this RFA, the term ''you'' in Attachment B shall mean ''applicant''. The Central Contract Registry CCR is a database that serves as the primary Government repository for contractor information required for the conduct of business with the Government. This database will also be used as a central location for maintaining organizational information for organizations seeking and receiving grants from the Government. Such organizations must register in the CCR prior to the submission of applications. A DUNS number is needed for CCR registration. For information about how to register in the CCR, visit ''Get Registered'' at the Web site, *http://www.grants.gov.* Allow a minimum of 5 business days to complete the CCR registration.

B. Related Programs

Funding availability for this program may be announced at approximately the same time as funding availability for similar but separate programs—and CFDA No. 10.458 (Crop Insurance Education in Targeted States). These programs have some similarities, but also key differences. The differences stem from important features of each program's authorizing legislation and different RMA objectives. Prospective applicants should carefully examine and compare the notices for each program.

Attachment A

I. Central Contractor Registration and Universal Identifier Requirements

A. Requirement for Central Contractor Registration (CCR)

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) Numbers

If you are authorized to make subawards under this award, you:

1. Must notify potential sub recipients that no entity (see definition in paragraph C of this award) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions for Purposes of This Award Term

1. Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the CCR Internet site (currently at *http://www.ccr.gov*).

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D & B) to uniquely identify business entities. A DUNS number may be obtained from D & B by telephone (currently 866–705–5711) or the Internet (currently at *http://fedgov.dnb.comlwebform*).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, Subpart C:

a. A Governmental organization, which is a State, local government, or Indian Tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 10 of the attachment to OMB Circular A–I33, ''Audits of States, Local Governments, and Non-Profit Organizations'').

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

Attachment B

I. Reporting Sub Awards and Executive Compensation

a. Reporting of First-Tier Subawards

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.I. of this award term to *http://www.fsrs.gov.*

ii. For sub award information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at *http://www.fsrs.gov* specify.

b. Reporting Total Compensation of Recipient Executives

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. The total Federal funding authorized to date under this award is $25,000 or more;

ii. In the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission

total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at *http://www.ccr.gov.*

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Sub Recipient Executives

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier sub recipient under this award, you shall report the names and total compensation of each of the sub recipient's five most highly compensated executives for the sub recipient's preceding completed fiscal year, if—

i. In the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at ~ CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at *http://www.sec.gov/answers/execomp.htm.*)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.,* between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any sub recipient.

e. Definitions. For Purposes of This Award Term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* Sec. __ .210 of the attachment to OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations'').

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2):

i. Salary and bonus.

ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

v. Above-market earnings on deferred compensation which is not tax-qualified.

vi. Other compensation, if the aggregate value of all such other compensation (*e.g.* severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

Signed in Washington, DC, on June 8, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–14596 Filed 6–13–11; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (Pub. L. 110–343) (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with the title II of the Act. The meeting is open to the public. The purpose of the meeting is to travel to and discuss current Tehama RAC projects for monitoring purposes. Public wishing to attend the monitoring trip will need to provide their own transportation to the project sites.

DATES: The meeting will be held on June 23, 2011 from 8 a.m. and end at approximately 3:45 p.m.

ADDRESSES: The meeting will be held in the field during the monitoring trip beginning at the Red Bluff Recreation Area, 1000 Lane, Red Bluff, CA. Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**.

All comments, including names and addresses when provided, are placed in

the record and are available for public inspection and copying. The public may inspect comments received at 825 N. Humboldt Ave., Willows, CA 95988. Please call ahead to (530) 934–1269 to facilitate entry into the building to view comments.

FOR FURTHER INFORMATION CONTACT: Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988. (530) 934–1269; e-mail *rjero@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 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday. Requests for reasonable accomodation for access to the facility or procedings may be made by contacting the person listed **FOR FURTHER INFORMATION.**

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Field Monitoring Discussion at Red Bluff Project, (5) Field Monitoring Discussion at Oak Ridge Project, (6) Next Agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 20, 2011 to be scheduled on the agenda. Written comments and requests for time for oral comments must be sent to Randy Jero, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, 825 N. Humboldt Ave, Willows, CA 95988 or by e-mail to *rjero@fs.fed.us* or via facsimile to 530–934–1212.

Dated: June 7, 2011.

Eduardo Olmedo,

District Ranger.

[FR Doc. 2011–14649 Filed 6–13–11; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2011]

Foreign-Trade Zone 119—Minneapolis-St. Paul, MN; Application for Reorganization Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Greater Metropolitan Area Foreign-Trade Zone Commission, grantee of FTZ 119, requesting authority to reorganize the zone under the alternative site framework (ASF) adopted by the Board (74 FR 1170, 1/12/09 (correction 74 FR 3987, 1/22/09); 75 FR 71069–71070, 11/22/10). The ASF is an option for grantees for the establishment or reorganization of general-purpose zones and can permit significantly greater flexibility in the designation of new ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the Board's standard 2,000-acre activation limit for a general-purpose zone project. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 8, 2011.

FTZ 119 was approved by the Board on July 24, 1985 (Board Order 305, 50 FR 31404, 8/2/1985) and expanded on April 14, 1994 (Board Order 690, 59 FR 19692, 4/25/1994) and June 4, 2010 (Board Order 1684, 75 FR 34097, 6/16/2010).

The current zone project includes the following sites: *Site 1* (3,002 acres)—located at the Minneapolis-St. Paul International Airport, Minneapolis (Hennepin County); *Site 2* (960 acres)—Mid-City Industrial Park, intersection of E. Hennepin Ave. (County Road 52) and Larpenteur Ave. (County Road 30), Minneapolis (Hennepin County); *Site 3* (13 acres)—Eagan Industrial Park, 3703 Kennebec Drive, Eagan (Dakota County); *Site 7* (193 acres)—Chaska Bio-Science Corporate Campus, intersection of Carver County Road 10 and New U.S. Highway 212, Chaska (Carver County); *Site 8* (200 acres)—Elk Run Bio-Business Park, located on the north side of U.S. Highway 52, approximately 2 miles southeast of the City of Pine Island (Goodhue County); *Site 9* (20 acres)—1700 Wynne Avenue, St. Paul (Ramsey County); and, *Site 10* (236 acres)—Bloomington Airport Industrial Park, near the Fort Snelling Military Reservation and I–494, Bloomington (Hennepin County). Sites 4–6 have expired or were deleted through previous actions.

The grantee's proposed service area under the ASF would be Isanti, Chisago, Sherburne, Wright, Anoka, Washington, Ramsey, Hennepin, McLeod, Carver, Scott, Dakota, Sibley, LeSueur, and Rice Counties, Minnesota, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies' needs for FTZ designation. The proposed service area is within and adjacent to the Minneapolis Customs and Border Protection port of entry. The grantee also proposes to maintain its existing site (Site 8) in Pine Island (Goodhue County).

The applicant is requesting authority to reorganize its existing zone project to include all of the existing sites as ''magnet'' sites. The ASF allows for the possible exemption of one magnet site from the ''sunset'' time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. No usage-driven sites are being requested at this time. Because the ASF only pertains to establishing or reorganizing a general-purpose zone, the application would have no impact on FTZ 119's authorized subzones.

In accordance with the Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is August 15, 2011. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 29, 2011.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 8, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–14683 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, July 13, 2011, from 8 a.m. until 5 p.m., Thursday, July 14, 2011, from 8 a.m. until 5 p.m., and Friday, July 15, 2011 from 8 a.m.. until 12:30 p.m. All sessions will be open to the public.

DATES: The meeting will be held on Wednesday, July 13, 2011, from 8 a.m. until 5 p.m., Thursday, July 14, 2011, from 8 a.m. until 5 p.m., and Friday, July 15, 2011 from 8 a.m. until 12:30 p.m.

ADDRESSES: The meeting will take place in the Homewood Suites by Hilton DC, 1475 Massachusetts Avenue, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, *telephone:* (301) 975–2006.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Wednesday, July 13, 2011, from 8 a.m. until 5 p.m., Thursday, July 14, 2011, from 8 a.m. until 5 p.m., and Friday, July 15, 2011 from 8 a.m. until 12:30 p.m. All sessions will be open to the public. The ISPAB was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the ISPAB's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html*

The agenda is expected to include the following items:

—Cloud Security and Privacy Panel discussion on addressing security and privacy for different types of cloud computing,

—Presentation from National Strategy for Trusted Identities in Cyberspace (NSTIC) to present the status of the implementation plan,

—Presentation on Doctrine of Cybersecurity relating to computer security research,

—Presentation on from National Protection and Programs Directorate, DHS, on the white paper, ''Enabling Distributed Security in Cyberspace'',

—Medical Device and relating security concerns,

—Presentation on National Initiative for Cybersecurity Education (NICE) and Cybersecurity Awareness,

—Presentations from Mississippi State Research on Wounded Warrior and Supervisory Control and Data Acquisition (SCADA),

—Panel presentation/discussion on Health and Human Services (HHS) Infrastructure and Nationwide Health Information Network (NHIN),

—Presentation on the Status of Cyber Legislation,

—Panel discussion on Controlled Unclassified Information and National Archives and Records Administration (NARA),

—Discussion on International Standards and Cybersecurity,

—Panel discussion of Product Assurance Testing and Methods (National Information Assurance Partnership (NIAP) Common Criteria Testing (CCTL),

—Presentation on Security and Privacy Tiger Team for the HIPAA,

—Presentation on a study on Economic Incentives and Cyber,

—Presentation on e-Service Strategy,

—Panel discussion on Industrial Control System Security, and

—Update of NIST Computer Security Division.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The ISPAB agenda will include a period of time, not to exceed thirty minutes, for oral comments from the public (Friday, July 15, 2011, at 8:30–9 a.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact Ms. Annie Sokol at the telephone number indicated above.

In addition, written statements are invited and may be submitted to the ISPAB at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

Dated: June 8, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–14704 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Office of the Secretary, National Institute of Standards and Technology

[Docket No. 110524296–1289–02]

Models for a Governance Structure for the National Strategy for Trusted Identities in Cyberspace

AGENCY: U.S. Department of Commerce, Office of the Secretary, and National Institute of Standards and Technology.

ACTION: Notice of inquiry.

SUMMARY: The Department of Commerce (Department) is conducting a comprehensive review of governance models for a governance body to administer the processes for policy and standards adoption for the Identity Ecosystem Framework in accordance with the National Strategy for Trusted Identities in Cyberspace (NSTIC or ''Strategy''). The Strategy refers to this governance body as the ''steering group.'' The Department seeks public comment from all stakeholders, including the commercial, academic and civil society sectors, and consumer and privacy advocates on potential models, in the form of recommendations and key assumptions in the formation and structure of the steering group. The Department seeks to learn and understand approaches for: (1) The structure and functions of a persistent and sustainable private sector-led steering group and (2) the initial establishment of the steering group. This Notice specifically seeks comment on the structures and processes for Identity Ecosystem governance. This Notice does not solicit comments or advice on the policies that will be chosen by the steering group or specific issues such as accreditation or trustmark schemes, which will be considered by the steering group at a later date. Responses to this Notice will serve only as input for a Departmental report of government recommendations for establishing the NSTIC steering group.

DATES: Comments are due on or before July 22, 2011.

ADDRESSES: Written comments may be submitted by mail to the National Institute of Standards and Technology, c/o Annie Sokol, 100 Bureau Drive, Mailstop 8930, Gaithersburg, MD 20899. Electronic comments may be sent to *NSTICnoi@nist.gov.* Electronic submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or PDF. Paper submissions should include a compact disc (CD). CDs should be labeled with the name and organizational affiliation of the filer and the name of the word processing program used to create the document. Comments will be posted at *http://www.nist.gov/nstic.* The Strategy is available at *http://www.whitehouse.gov/sites/default/files/rss_viewer/NSTICstrategy_041511.pdf.* The NIST Web site for NSTIC and its implementation is available at *http://www.nist.gov/nstic.*

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact: Annie Sokol, Information Technology Laboratory, National Institute of Standards and Technology, U.S. Department of Commerce, 100 Bureau Drive, Mailstop 8930, Gaithersburg, MD 20899, telephone (301) 975–2006; e-mail *nsticnoi@nist.gov.* Please direct media inquires to the Director of NIST's Office of Public Affairs, *gail.porter@nist.gov.*

SUPPLEMENTARY INFORMATION: Recognizing the vital importance of cyberspace to U.S. innovation, prosperity, education and political and cultural life, and the need for a trusted and resilient information and communications infrastructure, the Administration released the Cyberspace Policy Review in May 2009. Included in this review was a near-term action to ''build a cybersecurity-based identity management vision and strategy that addresses privacy and civil liberties interests, leveraging privacy-enhancing technologies for the Nation.'' The completion of this action is the National Strategy for Trusted Identities in Cyberspace (NSTIC or ''Strategy''), released in April 2011. The Strategy called for the creation of a National Program Office to be hosted at the Department of Commerce, as part of its ongoing cybersecurity and identity management activities. The Department intends to leverage the expertise present across many bureaus at the Department and across the U.S. Government, as well as experts in industry, academia, governments at all levels, communities of interest (including privacy, civil liberties, and consumer advocates), and the general public, through a series of inquiries and public workshops. This Notice of Inquiry is a continuation of the Administration's effort, and its goal is to explore the establishment and structure of governance models. The Department may explore additional areas in the future.

Background: This Notice reflects the initial steps of the Strategy's implementation as they relate to the Department's ongoing cyber security and identity management activities. Specifically, the Strategy calls for a ''steering group'' to administer the process for policy and standards development for the Identity Ecosystem Framework in accordance with the Strategy's Guiding Principles. The Identity Ecosystem is an online environment where individuals and organizations will be able to trust each other because they follow agreed upon standards to obtain and authenticate their digital identities and the digital identities of devices. The Identity Ecosystem Framework is the overarching set of interoperability standards, risk models, privacy and liability policies, requirements, and accountability mechanisms that govern the Identity Ecosystem.

The Strategy's four Guiding Principles specify that identity solutions must be: Privacy-enhancing and voluntary, secure and resilient, interoperable, and cost-effective and easy to use. The establishment of this steering group will be an essential component of achieving a successful implementation of the Strategy; a persistent and sustainable private sector-led steering group will maintain the rules of participating in the Identity Ecosystem, develop and establish accountability measures to promote broad adherence to these rules, and foster the evolution of the Identity Ecosystem to match the evolution of cyberspace itself.

The government's role in implementing the Strategy includes advocating for and protecting individuals; supporting the private sector's development and adoption of the Identity Ecosystem; partnering with the private sector to ensure that the Identity Ecosystem is sufficiently interoperable, secure and privacy enhancing; and being an early adopter of both Identity Ecosystem technologies and policies. In this role, the government must partner with the private sector to convene a wide variety of stakeholders to facilitate consensus, with a goal of ensuring that the Strategy's four Guiding Principles are achieved. The government has an interest in promoting the rapid development of a steering group capable of, and equally committed to, upholding the Strategy's Guiding Principles.

The Strategy calls for the development of a steering group that will bring together representatives of all of the interested stakeholders to ensure that the Identity Ecosystem Framework upholds the Guiding Principles by providing a minimum baseline of privacy, security, and interoperability through standards and policies—without creating unnecessary barriers to market entry. To that end, the steering group will administer the process for the adoption of policy and technical standards, set milestones and measure progress against them, and ensure that accreditation authorities validate participants' adherence to the requirements of the Identity Ecosystem Framework.

With this outcome in mind, the government seeks comment on the establishment and structure of a steering group that can successfully complete the above stated goals and objectives and, ultimately, achieve the Strategy's vision that ''individuals and organizations utilize secure, efficient, easy-to-use, and interoperable identity solutions to access online services in a manner that promotes confidence, privacy, choice, and innovation.''

Contribution of this NOI to the NSTIC implementation: Comments submitted on this Notice will serve as input for a Departmental report that will include a summary of responses to comments on this Notice, as well as the government's recommendations for the processes and structure necessary for the establishment and maintenance of a successful steering group. The report will focus on the steering group in two phases: (1) The structure and functions of the steering group and (2) the initial establishment of the steering group. This report may include recommendations for addressing governance structures and processes for a variety of issues, including: leadership, representation of Identity Ecosystem participants; accountability measures; liability issues; accreditation and certification processes; cross-sector and cross-industry issues; the balance of self-interested and self-regulatory roles of steering group participants; adherence to the Guiding Principles; interaction and involvement with standards development organizations and other technical bodies; use, development, and maintenance of a trustmark scheme; the relationship of the steering group to the Federal government; and interactions with international governments and fora.

Request for Comment: This Notice of Inquiry seeks comment on the

requirements of, and possible models for, (1) the structure and functions of the steering group and (2) the initial establishment of the steering group. Responses can include information detailing the effective and ineffective aspects of other governance models and how they apply to governance needs of the Identity Ecosystem, as well as feedback specific to requirements of the Strategy and governance solutions for those requirements. The questions below are intended to assist in framing the issues and should not be construed as a limitation on comments that parties may submit. The Department invites comment on the full range of issues that may be raised by this Notice. Comments that contain references to studies, research and other empirical data that are not widely published should be accompanied by copies of the referenced materials with the submitted comments, keeping in mind that all submissions will be part of public record.

The first section of this Notice addresses the steady-state structure of the steering group. The second section addresses the process of initiating a steering group that can evolve into that steady-state. The third and fourth sections address two fundamental aspects of governance both at initiation and steady-state: representation of stakeholders and international considerations.

1. Structure of the Steering Group

There are many models of governance that perform some of the wide range of functions needed to formulate and administer the Identity Ecosystem Framework. While not all of these functions are unique to the steering group, few examples of governance cover the same breadth of the technical and economic landscape as the Identity Ecosystem Framework. The steering group, therefore, has a greater risk of either being too small to serve its purpose, or too large to govern effectively. There is a full spectrum of affected economic sectors, some of which are highly-regulated and some of which are unregulated. The steering group will need to simultaneously integrate the Identity Ecosystem Framework with regulatory requirements faced by firms in a variety of industry sectors. At the same time, the steering group needs to consider and represent the interest of the broader public in security and privacy. It is imperative to find a working structure that accomplishes all these needs.

Questions

1.1. Given the Guiding Principles outlined in the Strategy, what should be the structure of the steering group? What structures can support the technical, policy, legal, and operational aspects of the Identity Ecosystem without stifling innovation?

1.2. Are there broad, multi-sector examples of governance structures that match the scale of the steering group? If so, what makes them successful or unsuccessful? What challenges do they face?

1.3. Are there functions of the steering group listed in this Notice that should not be part of the steering group's activities? Please explain why they are not essential components of Identity Ecosystem Governance.

1.4. Are there functions that the steering group must have that are not listed in this notice? How do your suggested governance structures allow for inclusion of these additional functions?

1.5. To what extent does the steering group need to support different sectors differently?

1.6. How can the steering group effectively set its own policies for all Identity Ecosystem participants without risking conflict with rules set in regulated industries? To what extent can the government mitigate risks associated with this complexity?

1.7. To what extent can each of the Guiding Principles of the Strategy—interoperability, security, privacy and ease of use—be supported without risking ''pull through'' [1] regulation from regulated participants in the Identity Ecosystem?

1.8. What are the most important characteristics (*e.g.,* standards and technical capabilities, rulemaking authority, representational structure, *etc.*) of the steering group?

1.9. How should the government be involved in the steering group at steady state? What are the advantages and disadvantages of different levels of government involvement?

2. Steering Group Initiation

In its role of supporting the private sector's leadership of the Identity Ecosystem, the government's aim is to accelerate establishment of a steering group that will uphold the Guiding Principles of the Strategy. The government thus seeks comment on the ways in which it can be a catalyst to the establishment of the steering group.

There are many means by which the steering group could be formed, and such structures generally fall into three broad categories:

(a) A new organization, organically formed by interested stakeholders.

(b) An existing stakeholder organization that establishes the steering group as part of its activities.

(c) Use of government authorities, such as the Federal Advisory Committee Act (FACA), to charge a new or existing advisory panel with formulating recommendations for the initial policy and technical framework for the Identity Ecosystem, allowing for a transition to a private sector body after establishing a sustainable Identity Ecosystem, or through the legislative process.

Questions

2.1. How does the functioning of the steering group relate to the method by which it was initiated? Does the scope of authority depend on the method? What examples are there from each of the broad categories above or from other methods? What are the advantages or disadvantages of different methods?

2.2. While the steering group will ultimately be private sector-led regardless of how it is established, to what extent does government leadership of the group's initial phase increase or decrease the likelihood of the Strategy's success?

2.3. How can the government be most effective in accelerating the development and ultimate success of the Identity Ecosystem?

2.4. Do certain methods of establishing the steering group create greater risks to the Guiding Principles? What measures can best mitigate those risks? What role can the government play to help to ensure the Guiding Principles are upheld?

2.5. What types of arrangements would allow for both an initial government role and, if initially led by the government, a transition to private sector leadership in the steering group? If possible, please give examples of such arrangements and their positive and negative attributes.

3. Representation of Stakeholders in the Steering Group

Representation of all stakeholders is a difficult but essential task when stakeholders are as numerous and diverse as those in the Identity Ecosystem. The breadth of stakeholder representation and the voice they have

[1] NSTIC solutions will ideally be used across all industries, including both regulated and unregulated industries. ''Pull through'' refers to the concept that when implementing an NSTIC solution that touches some regulated industries, individuals or firms implementing those solutions would then find that they are subject to the specific regulations for those industries. This could create a confusing policy and legal landscape for a company looking to serve as an identity provider to all sectors.

in policy formulation must be fair and transparent. The steering group must be accountable to all participants in the Identity Ecosystem, including individuals. An essential task for the steering group will be to provide organizations or individuals who may not be direct participants in the Identity Ecosystem, such as privacy and civil liberties advocacy groups, with a meaningful way to have an impact on policy formulation.

Given the diverse, multi-sector set of stakeholders in the Identity Ecosystem, representation in the steering group must be carefully balanced. Should the influence skew in any direction, stakeholders may quickly lose confidence in the ability of the steering group to fairly formulate solutions to the variety of issues that surround the creation and governance of the Identity Ecosystem.

Question

3.1. What should the make-up of the steering group look like? What is the best way to engage organizations playing each role in the Identity Ecosystem, including individuals?

3.2. How should interested entities that do not directly participate in the Identity Ecosystem receive representation in the steering group?

3.3. What does balanced representation mean and how can it be achieved? What steps can be taken guard against disproportionate influence over policy formulation?

3.4. Should there be a fee for representatives in the steering group? Are there appropriate tiered systems for fees that will prevent ''pricing out'' organizations, including individuals?

3.5. Other than fees, are there other means to maintain a governance body in the long term? If possible, please give examples of existing structures and their positive and negative attributes.

3.6. Should all members have the same voting rights on all issues, or should voting rights be adjusted to favor those most impacted by a decision?

3.7. How can appropriately broad representation within the steering group be ensured? To what extent and in what ways must the Federal government, as well as State, local, tribal, territorial, and foreign governments be involved at the outset?

4. International

Given the global nature of online commerce, the Identity Ecosystem cannot be isolated from internationally available online services and their identity solutions. Without compromising the Guiding Principles of the Strategy, the public and private sectors will strive to enable international interoperability. In order for the United States to benefit from other nations' best practices and achieve international interoperability, the U.S. public and private sectors must be active participants in international technical and policy fora.

No single entity, including the Federal government, can effectively participate in every international standards effort. The private sector is already involved in many international standards initiatives; ultimately, then, the international integration of the Identity Ecosystem will depend in great part upon private sector leadership.

Questions

4.1. How should the structure of the steering group address international perspectives, standards, policies, best practices, *etc*?

4.2. How should the steering group coordinate with other international entities (*e.g.,* standards and policy development organizations, trade organizations, foreign governments)?

4.3. On what international entities should the steering group focus its attention and activities?

4.4. How should the steering group maximize the Identity Ecosystem's interoperability internationally?

4.5. What is the Federal government's role in promoting international cooperation within the Identity Ecosystem?

Dated: June 7, 2011.

Patrick Gallagher,

Under Secretary of Commerce for Standards and Technology.

[FR Doc. 2011–14702 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Conference on Weights and Measures 2011 Annual Meeting

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The National Conference on Weights and Measures (NCWM) 2011 Annual Meeting will be held July 17 to 21, 2011. Publication of this notice on the NCWM's behalf is undertaken as a public service. The meetings are open to the public but a paid registration is required. See registration information in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The meeting will be held on July 17 to 21, 2011.

ADDRESSES: The meeting will be held at the Holiday Inn Downtown at the Park located at 200 South Pattee in Missoula, MT 59802.

FOR FURTHER INFORMATION CONTACT: Carol Hockert, Chief, NIST, Weights and Measures Division, 100 Bureau Drive, Stop 2600, Gaithersburg, MD 20899–2600 or by telephone (301) 975–5507 or by e-mail at *Carol.Hockert@nist.gov.*

SUPPLEMENTARY INFORMATION: The NCWM is an organization of weights and measures officials of the states, counties, and cities, Federal agencies, and private sector representatives. These meetings bring together government officials and representatives of business, industry, trade associations, and consumer organizations on subjects related to the field of weights and measures technology, administration, test methods and enforcement. NIST attends the conference to promote uniformity among the states in laws, regulations, methods, and testing equipment that comprise the regulatory control of commercial weighing and measuring devices and other trade and commerce issues. To register for this meeting, please see the link ''96 National Conference on Weights and Measures'' at *http://www.ncwm.net* or *http://www.nist.gov/owm* which contains meeting agendas, registration forms and information on hotel reservations.

The following are brief descriptions of some of the significant agenda items that will be considered along with other issues at this meeting. Comments will be taken on these and other issues during several public comment sessions. See NCWM Publication 16 (Pub 16) for information on all of the issues that will be considered at this meeting. At this stage, the items are proposals. The Committees will also hold work sessions where they will finalize their recommendations for possible adoption by NCWM on July 20 to 21, 2011. The Committees may withdraw or carry over items that need additional development.

The Specifications and Tolerances Committee (S&T Committee) will consider proposed amendments to NIST Handbook 44, ''Specifications, Tolerances, and other Technical Requirements for Weighing and Measuring Devices (NIST Handbook 44).'' Those items address weighing and measuring devices used in commercial applications, that is, devices that are used to buy from or sell to the public or used for determining the quantity of product sold among businesses.

Items on the agenda of the NCWM Laws and Regulations Committee (L&R Committee) relate to proposals to amend NIST Handbook 130, ''Uniform Laws and Regulations in the area of legal metrology and engine fuel quality'' and NIST Handbook 133 ''Checking the Net Contents of Packaged Goods.''

NCWM Specifications and Tolerances Committee

General Code

Item 310–2 G–S.1. Identification (Software)

This proposal is intended to amend the identification marking requirements for all electronic devices manufactured after a specified date by requiring that metrological software version or revision information be identified. Additionally, the proposal suggests listing methods, other than ''permanently marked,'' for providing the required information.

Item 310–3 G–A.6. Nonretroactive Requirements (Remanufactured Equipment)

This proposal is intended to clarify the intent of the 2001 NCWM position on the application of nonretroactive requirements to commercial weighing and measuring devices which have been determined to have been ''remanufactured'' after undergoing repair, overhaul or renovation. This proposal is intended to clarify current requirements without causing undo costs on device manufacturers, suppliers and owners.

Special Meeting Announcement: A Task Group on Retail Motor Fuel Dispenser (RMFD) Price Posting and Computer Capability will meet from 1:30 to 4 p.m. on Sunday, July 17, 2011 to develop criteria for possible inclusion in the Liquid Measuring Device Code (LMD) related to price posting and computing capability of RMFDs to reflect current market practices in posting fuel prices.

NCWM Laws and Regulations Committee

The following items are proposals to amend NIST Handbook 130:

Method of Sale of Commodities Regulation

Item 232–1. Polyethylene Products, Method of Sale Regulation Section 2.13.4. ''Declaration of Weight.''—The L&R Committee will consider a proposal to revise the density value used to calculate the net weights on some packages of polyethylene products. The intent of the proposal is to recognize heavier density plastics are being used in the production of some sheeting and bag products. Accurate density values are needed for use by weights and measures inspectors in enforcing laws that require quantity declarations to be accurate. (See also related Item 260–2 under NIST Handbook 133, Chapter 4.7. Polyethylene Sheeting-Test Procedure—Footnote to Step 3 in the complete agenda of the L&R Committee in NCWM Publication 16)

Item 232–2. Proposed Method of Sale Regulation for Packages of Printer Ink and Toner Cartridges—The L&R Committee will consider recommendations to develop a proposed method of sale regulation to clarify the labeling requirements for packaged inkjet and toner cartridges to ensure that consumers can make value comparisons.

Special Meeting Announcement: The Task Group on Printer Ink and Toner Cartridges will meet on Sunday, July 17, 2011 from 1:30 to 4 p.m.

Item 232–4. HB 130, Method of Sale Regulation, Section 2.33. Vehicle Engine Oil—The L&R Committee will consider a proposal to adopt a method of sale in HB 130 related to the sale of vehicle engine oil in conjunction with oil change services. (In 237–6, which is not included in this notice) there is a corresponding proposal to amend the Fuels and Automotive Lubricants Regulation to require detailed invoicing requirements for sales of engine oil.) Some oil service facilities may not deliver the brand and viscosity of oil that they advertise. As a result consumers may pay for higher quality oil than they receive. This proposed regulation will require sellers of oil change services to provide full disclosure to consumers in a written or printed document that lists the brand name, SAE viscosity, and other information (including the oil's service category) of any engine oil delivered into the customer's vehicle.

The following items are proposals to amend NIST Handbook 133:

Item 260–2. The L&R Committee will consider a proposal to amend Chapter 4.7. Polyethylene Sheeting-Test Procedure—Footnote to Step 3 to provide density values for use by weights and measures inspectors in verifying the quantity statements on packages polyethylene sheeting and bags.

Item 260–3. Moisture Allowance for Pasta Products—The L&R Committee will consider a proposal to adopt a 3% moisture allowance for macaroni, noodle, and like products (pasta products). This value will be used by weights and measures officials in determining whether or not any shortages in the weight of packages of pasta are reasonable.

Dated: June 8, 2011.

Charles H. Romine,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2011–14699 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RIN 0648–XA472]

Marine Mammals; Notice of Intent To Prepare an Environmental Impact Statement for the Atlantic Large Whale Take Reduction Plan

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

ACTION: Notice of intent (NOI) to prepare an Environmental Impact Statement (EIS); notice of public scoping meetings; request for comments.

SUMMARY: NMFS announces its intention to amend the Atlantic Large Whale Take Reduction Plan (ALWTRP). An Environmental Impact Statement (EIS) will be prepared in accordance with the National Environmental Policy Act (NEPA), to analyze impacts to the environment of the management alternatives under consideration. The purpose of this action is to notify the public of upcoming scoping meetings to solicit public comments on ways to reduce the risk of serious injury or mortality of right, humpback, and finback whales as a result of entanglement in vertical lines associated with commercial trap/pot and gillnet fisheries off the U.S. East Coast. NMFS requests comments on management options for this action. These options will form the basis of the alternatives that will later be analyzed through the EIS process.

DATES: Written comments must be postmarked or transmitted via facsimile (fax) at the appropriate address or number (*see* **ADDRESSES** section) no later than 5 p.m. Eastern Standard Time on September 12, 2011.

The public scoping meetings will be held in July and August 2011. For specific dates, times, and locations *see* **SUPPLEMENTARY INFORMATION** section.

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

○ *Fax:* (978) 281–9394.

○ *Mail:* Paper, disk, or CD–ROM comments should be sent to Mary

Colligan, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope, ''Comments on the ALWTRP Scoping.''

○ *E-mail: ALWTRPScoping.Comments@noaa.gov.*

Copies of the background documents provided to the Atlantic Large Whale Take Reduction Team (ALWTRT) in advance of the November 2010 and April 2011 ALWTRT meeting and general information on the ALWTRP can be obtained from the ALWTRP Web site at: *http://www.nero.nmfs.gov/whaletrp.* Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Gordan Waring, NMFS, 166 Water St., Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nmfs.noaa.gov/pr/sars/.* A document that summarizes major issues, legal requirements, and identifies potential management options will also be posted on the ALWTRP Web site on or about July 1, 2011, and made available to the public at scoping meetings. The above documents can also be obtained by contacting Kate Swails, *Kate.Swails@noaa.gov* or (978) 282–8481.

FOR FURTHER INFORMATION CONTACT: Kate Swails, NMFS, Northeast Region, 978–282–8481; Barb Zoodsma, NMFS, Southeast Region, 904–321–2806; or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Large whale entanglements and entanglements resulting in serious injuries and mortalities are still occurring; therefore, NMFS believes modifications to the ALWTRP are needed to meet the goals of the Marine Mammal Protection Act (MMPA). Under the MMPA, NMFS is required to reduce the incidental mortality and serious injury to three strategic large whale stocks—the Western Stock of the North Atlantic right whales (*Eubalaena glacialis*), the Gulf of Maine stock of humpback whales (*Megaptera novaeangliea*), and the Western North Atlantic stock of fin whales (*Balaenoptera physalus*)—incidentally taken in commercial fisheries to below the Potential Biological Removal (PBR) level for each stock.

ALWTRT

At the 2003 ALWTRT meeting, the ALWTRT agreed to manage entanglement risk by first reducing the risk associated with groundlines and then reducing the risk associated with vertical lines in commercial trap/pot and gillnet gear. Risk reduction of groundline was addressed in October 2007 with the implementation of the sinking groundline requirement for all fisheries throughout the entire East coast (72 FR 57104, October 5, 2007).

At the 2009 ALWTRT meeting, the Team agreed on a schedule to develop a management approach to reduce the risk of serious injury and mortality due to vertical line. As a result of this schedule NMFS committed to publishing a final rule to address vertical line entanglement by 2014. The approach for the vertical line rule will focus on reducing the risk of vertical line entanglements in high impact areas versus a wide-broad scale management scheme. Using fishing gear survey data and whale sightings per unit effort (SPUE) a model was developed to determine the co-occurrence of fishing gear density and whale density.

The ALWTRT Northeast Subgroup met in November 2010 and the Mid-Atlantic/Southeast Subgroup met in April 2011 to review the co-occurrence model and consider its implications for an overall management strategy to address vertical line entanglements.

The Team agreed NMFS should use the model to consider and develop possible options to address fishery interactions with large whales by reducing the potential for entanglements, minimizing adverse effects if entanglements occur, and mitigating the effects of any unavoidable entanglements.

Management Options

This notice provides an opportunity for public involvement. NMFS requests comments on management options for this action. Additionally, NMFS is seeking information on the range of impacts that should be considered for the various options. Background documents provided to the ALWTRT and general public in advance of the November 2010 and April 2011 meetings are available for review (*see* **ADDRESSES** section). A scoping document summarizing major issues, legal requirements, and identifying potential management options will be made available prior to the scoping meetings (see **ADDRESSES** section). Comments received on this action will assist NMFS in determining the alternatives for rulemaking to reduce interactions of right, humpback and fin whales with commercial fisheries as a result of vertical lines.

The ALWTRP (50 CFR 229.32) is a multi-faceted plan that includes area closures, gear modification requirements in areas open to fixed gear fishing, gear research to develop new modifications to current practices and/or fishing techniques, a right whale Sighting Advisory System, and a disentanglement program to free whales incidentally caught in fishing gear. Within the comment period established by this notice (*see* **DATES** section), NMFS will hold 15 public scoping meetings to gather public comment on the development and implementation of new management measures for the ALWTRP.

Schedule of Public Scoping Meetings

The dates, times, and locations of the meetings are scheduled as follows:

1. Monday, July 11, 2011—East Machias, ME 6–9 p.m.

Washington Academy, 66 High Street, East Machias, ME 04630.

2. Tuesday, July 12, 2011—Ellsworth, ME 6–9 p.m.

Ellsworth City Hall (Auditorium), 1 City Hall Plaza, Ellsworth, ME 04605.

3. Wednesday, July 13, 2011—Rockland, ME 6–9 p.m.

Rockland District High School (Auditorium), 400 Broadway, Rockland, ME 04841.

4. Thursday, July 14, 2011—Portland, ME 6–9 p.m.

Portland City Hall (State of Maine Room), 389 Congress St., Portland, ME 04101.

5. Monday, July 18, 2011—Providence, RI 5:30–8:30 p.m.

Providence Public Library, 150 Empire St., Providence, RI 02903.

6. Tuesday, July 19, 2011—Plymouth, MA 6–9 p.m.

Plymouth Public Library (Fehlow Room), 132 South St., Plymouth, MA 02360.

7. Wednesday, July 20, 2011—Chatham, MA 6–9 p.m.

Chatham Community Center (Large Meeting Room), 702 Main St., Chatham, MA 02633.

8. Thursday, July 21, 2011—Gloucester, MA 6–9 p.m.

NOAA Northeast Regional Office (Hearing Room A&B), 55 Great Republic Dr., Gloucester, MA 01930.

9. Tuesday, July 26, 2011—Morehead City, NC 6–9 p.m.

NC Division of Marine Fisheries Central District Office, 5285 Highway 70 West, Morehead City, NC 28557.

10. Wednesday, July 27, 2011—Virginia Beach, VA 6–9 p.m.

Meyera E. Obendorf Central Library (Folio Room), 4100 Virginia Beach Blvd., Virginia Beach, VA 23452.

11. Thursday, July 28, 2011—Ocean View DE 6–9 p.m.

Ocean View Town Hall (John West Park), 32 West Ave., Ocean View, DE 19970.

12. Friday, July 29, 2011—Manahawkin, NJ 6–9 p.m.

Stafford Township (Council Meeting Room), 260 E. Bay Ave.. Manahawkin, NJ 08050.

13. Monday August 22, 2011—Cape Canaveral, FL 5–8 p.m.

Cape Canaveral Public Library, 201 Polk Avenue, Cape Canaveral, FL 32920.

14. Tuesday August 23, 2011—Jacksonville, FL 6–9 p.m.

Jacksonville Port Authority (JAXPORT), Board Room, 2831 Talleyrand Avenue, Jacksonville, FL 32206.

15. Wednesday August 24, 2011—Garden City, GA 6–9 p.m.

Garden City City Hall, 100 Central Avenue (at intersection of Dean Forest Rd. and Constantine Rd.), Garden City, GA 31405.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kate Swails (978) 282–8481.

Authority: 16 U.S.C. 1361 *et seq.*

Dated: June 8, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–14743 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA492

Fisheries of the Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 26 Assessment Workshop for Caribbean silk snapper, queen snapper and redtail parrotfish.

SUMMARY: The SEDAR assessments of the Caribbean stocks of silk snapper, queen snapper and redtail parrotfish will consist of a series of three workshops and webinars: a Data Workshop, an Assessment Workshop, and a Review Workshop.

DATES: The Assessment Workshop will take place July 26–29, 2011. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Assessment Workshop will be held at the Wyndham Sugar Bay Resort & Spa, 6500 Estate Smith Bay, St. Thomas, USVI 00802; *telephone:* (340) 777–7100.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; *telephone:* (843) 571–4366.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Stock Assessment Workshop and webinars is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting Panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGOs; International experts; and staff of Councils, Commissions, and state and Federal agencies.

SEDAR 26 Assessment Workshop Schedule

July 26–29, 2011; SEDAR 26 Assessment Workshop

July 26, 2011: 9 a.m.–8 p.m.; July 27–28, 2011: 8 a.m.–8 p.m.; July 29, 2011: 8 a.m.–12 p.m.

Using datasets provided by the Data Workshop, participants will develop population models to evaluate stock status, estimate population benchmarks and stock status criteria, and project future conditions. Participants will recommend the most appropriate methods and configurations for determining stock status and estimating population parameters. Participants will prepare a workshop report, compare and contrast various assessment approaches, and determine whether the assessments are adequate for submission to the review panel.

The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from, or completed prior to the time established by this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Dated: June 9, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–14668 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA397

Taking and Importing Marine Mammals; Geological and Geophysical Exploration of Mineral and Energy Resources on the Outer Continental Shelf in the Gulf of Mexico

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

ACTION: Notice; receipt of revised application for Letters of Authorization; request for comments and information.

SUMMARY: NMFS has received a revised application from the U.S. Department of the Interior (DOI), Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), formerly Minerals Management Service (MMS), for authorization to take marine mammals, by Level A and Level B harassment, incidental to oil and gas industry sponsored seismic surveys for purposes of geological and geophysical (G&G) exploration on the Outer Continental Shelf (OCS) in the Gulf of Mexico (GOM) from approximately 2012 to 2017. Pursuant to Marine Mammal Protection Act (MMPA) implementing regulations, NMFS is announcing receipt of BOEMRE's request for the development and implementation of regulations governing the incidental taking of marine mammals and inviting information, suggestions, and comments on BOEMRE's revised application.

DATES: Comments and information must be received no later than July 14, 2011.

ADDRESSES: Comments on the application should be addressed to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing e-mail comments is *ITP.Goldstein@noaa.gov.* NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10-megabyte file size.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.nmfs.noaa.gov/pr/permits/incidental.htm* without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.* Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Jolie Harrison, Office of Protected Resources, NMFS, 301–713–2289, ext. 172.

SUPPLEMENTARY INFORMATION:

Availability

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the Internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm.*

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued, or if the taking is limited to harassment an Incidental Harassment Authorization (IHA) is issued. Upon making a finding that an application for incidental take is adequate and complete, NMFS commences the incidental take authorization process by publishing in the **Federal Register** a notice of a receipt of an application for the implementation of regulations or a proposed IHA.

An authorization for the incidental taking of small numbers of marine mammals shall be granted if NMFS finds that the taking during the relevant period will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The authorization must set forth the permissible methods of taking, other means of effecting the least practicable adverse impact on the species or stock(s) and its habitat, and requirements pertaining to the monitoring and reporting of such takings.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

''An impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

''Any act of pursuit, torment, or annoyance which (i) Has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).''

Summary of Request

NMFS published a notice of receipt of application for an incidental take authorization from MMS, requesting comments and information on taking marine mammals incidental to conducting oil and gas exploration activities in the GOM, on March 3, 2003 (68 FR 9991). NMFS published a notice of extension of comment deadline on the application in the **Federal Register** on April 3, 2003 (68 FR 16263). On November 18, 2004 (69 FR 67535), NMFS published a notice of intent to prepare an Environmental Impact Statement, notice of public meetings, and request for scoping comments, for the requested authorizations. On April 18, 2011, NMFS received a revised complete application from the BOEMRE requesting an authorization for the take of marine mammals incidental to seismic surveys on the OCS in the GOM. The requested regulations would establish a framework for authorizing incidental take in future Letters of Authorization (LOA). These LOAs, if approved, would authorize the take, by Level A (injury) and Level B (behavioral) harassment, of 21 species of cetaceans (20 odontocetes and 1 mysticete) incidental to seismic surveys for purposes of G&G exploration on the OCS in the GOM.

BOEMRE states that underwater noise associated with sound sources (i.e., airguns, boomers, sparkers, and chirpers) may expose marine mammals in the area to noise and pressure resulting in behavioral disturbance or temporary or permanent loss of hearing sensitivity.

Specified Activities

In the revised application submitted to NMFS, BOEMRE requests authorization to take marine mammals, by Level A and Level B harassment, incidental to oil and gas industry sponsored seismic surveys on the OCS in the GOM. BOEMRE defines two primary categories of seismic surveys: (1) Deep seismic (*e.g.,* two-dimensional [2D], three-dimensional [3D], wide

azimuth surveys [WAZ]), and ocean bottom surveys [OBS], and (2) high resolution surveys.

Deep Seismic Surveys

For 2D seismic surveys, a single streamer is towed behind the survey vessel, together with a single source or airgun array. Seismic vessels generally follow a systematic pattern during a survey, typically a simple grid pattern for 2D work with lines no closer than half a kilometer (km). A 2D survey may take many months depending on the size of the geographic area.

A 3D survey uses multiple streamers and an airgun array(s), to collect a very large number of 2D slices, with minimum line separations of only 25 to 30 meters (m) (82 to 98.4 feet [ft]). A 3D survey may take many months to complete (*e.g.,* 3 to 18) and involves a precise definition of the survey area and transects, including multiple passes to cover a given survey area. For seismic surveys, 3D methods represent a substantial improvement in resolution and useful information relative to 2D methods. Most areas in the GOM previously surveyed using 2D have been, or will be surveyed using 3D.

A typical 3D survey might employ a dual array of 18 airguns per array. The streamer array might consist of six to eight parallel cables, each 3 to 12 km (1.9 to 7.5 miles [mi]) long, and spaced 25 to 100 m (82 to 328.1 ft) apart. An eight streamer array used for deep water surveys is typically 700 m (2,296.6 ft) wide. A series of 3D surveys collected over time (commonly referred to as four-dimensional [4D] seismic surveying) is used for reservoir monitoring and management (*i.e.,* the movement of oil, gas, and water in reservoirs can be observed over time).

WAZ acquisition configurations involve multiple vessels operating concurrently in a variety of source vessel to acquisition vessel geometries. Several source vessels (usually two to four) are used in coordination with single or dual receiver vessels either in a parallel or rectangular arrangement with a typical 1,200 m (3,937 ft) vessel spacing to maximize the azimuthal quality of data acquired. It is not uncommon to have sources also deployed from the receiver vessels in addition to source-only vessels. This improves the signal-to-noise ratio and helps to better define the salt and sub-salt structures in the deep waters of the GOM. Coiled (spiral) surveys are a further refinement of the WAZ acquisition of sub-salt data. These surveys can consist of a single source/receiver arrangement or a multi-vessel operation with multi-sources where the vessels navigate in a coiled or spiral pattern over the area of acquisition.

Deep seismic surveys (2D, 3D, or WAZ) are typically deeper penetrating than high resolution surveys and may also be done on leased blocks for more accurate identification of potential reservoirs in ''known'' fields. This technology can be used in developed areas to identify bypassed hydrocarbon-bearing zones in currently producing formations and new productive horizons near or below currently producing formations. It can also be used in developed areas for reservoir monitoring and field management.

OBS surveys were originally designed to enable seismic surveys in congested areas, such as producing fields, with many platforms and production facilities. Autonomous nodes or cables are deployed and retrieved by either vessels or remotely operated vehicles (ROVs). Nodes are becoming more commonly used in the GOM. OBS surveys have been found to be useful for obtaining multi-component (i.e., seismic pressure, vertical, and the two horizontal motions of the water bottom, or seafloor) information.

OBS surveys require the use of multiple vessels (*i.e.,* usually two vessels for cable or node layout/pickup, one vessel for recording, one vessel for shooting, and two utility vessels). These vessels are generally smaller than those used in streamer operations, and the utility vessels can be very small. Operations are conducted ''around the clock'' and begin by dropping the cables off the back of the layout vessel or by deployment of nodal receivers by ROVs. Cable length or the numbers of nodes depend upon the survey demands; it is typically 4.2 km (2.6 mi), but can be up to 12 km. However, depending on spacing and survey size, hundreds of nodes can be deployed and re-deployed over the span of the survey. Groups of seismic detectors, usually hydrophones and vertical motion geophones, are attached to the cable in intervals of 25 to 50 m (82 to 164 ft) or autonomous nodes are spaced similarly. Multiple cables/nodes are laid parallel to each other using this layout method with a 50 m interval between cables/nodes. Typically dual airgun arrays are used on a single source vessel. When a cable/node is no longer needed to record seismic data, it is picked up by the cable pickup vessel/ROV and is moved over to the next position where it is needed. A particular cable/node can be on the seafloor anywhere from two hours to several days, depending upon operation conditions. Normally a cable will be left in place about 24 hr. However, nodes may remain in place until the survey is completed or recovered and then re-deployed by an ROV.

High Resolution Surveys

High resolution site surveys are conducted to investigate the shallow sub-surface for geohazards and soil conditions, as well as to identify potential benthic biological communities (or habitats) and archaeological resources in support of review and mitigation measures for OCS exploration and development plans. A typical operation consists of a vessel towing an airgun (about 25 m behind the vessel) and a 600 m (1,968.5 ft) streamer cable with a tail buoy (about 700 m behind the vessel). Typical surveys cover one lease block, which is 4.8 km (3 mi) on a side. Including line turns, the time to survey one block is about 2 days; however, streamer and airgun deployment and other operations may add to the total survey time. Additional information on seismic surveys for purposes of G&G exploration on the OCS in the GOM is contained in the application, which is available upon request (see **ADDRESSES**).

Information Solicited

Interested persons may submit information, suggestions, and comments related to BOEMRE's request (see **ADDRESSES**). All information, suggestions, and comments related to BOEMRE's request and NMFS's potential development and implementation of regulations governing the incidental taking of marine mammals by the oil and gas industry's seismic surveys will be considered by NMFS in developing, the most effective regulations governing the issuance of Letters of Authorization.

Dated: June 8, 2011.

Helen M. Golde,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–14742 Filed 6–13–11; 8:45 am]

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DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 110207099–1319–02]

[RIN 0660–XA23]

The Internet Assigned Numbers Authority (IANA) Functions

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Further Notice of Inquiry.

SUMMARY: Critical to the Internet Domain Name System (DNS) is the continued performance of the Internet Assigned Numbers Authority (IANA) functions. The IANA functions have historically included: (1) The coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the ARPA and INT top-level domains (TLDs). The Internet Corporation for Assigned Names and Numbers (ICANN) currently performs the IANA functions, on behalf of the United States Government, through a contract with United States Department of Commerce's National Telecommunications and Information Administration (NTIA). On February 25, 2011, NTIA released a Notice of Inquiry (NOI) to obtain public comment on enhancing the performance of the IANA functions. NTIA received comments from a range of stakeholders: Governments, private sector entities, and individuals. After careful consideration of the record, NTIA is now seeking public comment through a Further Notice of Inquiry (FNOI) on a draft statement of work (Draft SOW), a key element of the procurement process for the new IANA functions contract.

DATES: Comments are due on or before July 29, 2011.

ADDRESSES: Written comments may be submitted by mail to Fiona M. Alexander, Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230. Comments may be submitted electronically to *IANAFunctionsFNOI@ntia.doc.gov.* Comments provided via electronic mail should be submitted in a text searchable format using one of the following: PDF print-to-PDF format, and not in a scanned format, HTML, ASCII, MSWord or WordPerfect format (please specify version). Comments will be posted to NTIA's Web site at *http://www.ntia.doc.gov/ntiahome/domainname/IANAFunctionsFNOI.html.*

FOR FURTHER INFORMATION CONTACT: For questions about this FNOI contact: Vernita D. Harris, Deputy Associate Administrator, Office of International Affairs, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 4701, Washington, DC 20230; *telephone:* (202) 482–4686; *e-mail: vharris@ntia.doc.gov.* Please direct media inquiries to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: Critical to the Internet DNS is the continued performance of the IANA functions. The IANA functions have historically included: (1) The coordination of the assignment of technical Internet protocol parameters; (2) the administration of certain responsibilities associated with Internet DNS root zone management; (3) the allocation of Internet numbering resources; and (4) other services related to the management of the ARPA and INT TLDs. ICANN currently performs the IANA functions, on behalf of the United States Government, through a contract with NTIA. The current contract is set to expire on September 30, 2011.[1]

NTIA issued an NOI on February 25, 2011, seeking public comment to inform the procurement process leading to the award of a new IANA functions contract.[2] The NOI requested comments on a detailed set of questions related to enhancing the performance of the IANA functions. The NOI represented the first comprehensive review of the IANA functions contract since the award of the initial contract in 2000.

Comment Summary and Policy Discussion

NTIA received over 80 comments in response to the NOI.[3] This summary identifies key issues and themes raised in the docket and frames a draft statement of work for which we seek comment in this notice. The following summary does not intend to respond to all the comments received in response to the NOI. To the extent that NTIA has included specific language in the Draft SOW to address a comment, NTIA provides a brief explanation of its policy rationale.

General Comments

Some commenters stated that the IANA functions are performed for the benefit of the global Internet community and therefore accountability, transparency, and trust are required.[4] While not specific to the questions asked in the NOI, most commenters stated their support for multi-stakeholder, private sector-led technical coordination of the DNS.[5]

Some commenters expressed the view that NTIA should transition the IANA functions to ICANN.[6] However, other commenters did not share this view and stated that no changes should be made to the current structure of the IANA functions contract.[7] These commenters expressed concerns about transparency and accountability of the current contractor's decision-making. Some commenters proposed a multi-

[1] The current contract has an option to extend the performance period for an additional six months. If necessary, NTIA will exercise this option in order to complete the contract procurement process. The current contract is available on NTIA's Web site at *http://www.ntia.doc.gov/ntiahome/domainname/iana.htm.*

[2] Notice of Inquiry, Request for Comments on the Internet Assigned Numbers Authority (IANA) Functions, 76 FR 10569 (Feb. 25, 2011), available at *http://www.ntia.doc.gov/frnotices/2011/fr_ianafunctionsnoi_02252011.pdf.*

[3] The comments in their entirety are available for review on the NTIA's Web site at *http://www.ntia.doc.gov/comments/110207099-1099-01/.*

[4] *See e.g.,* Cisco Comments at 2 (March 28, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/Cisco.pdf*; ictQatar Comments at 1 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=D5E26B75-D14A-40C6-820F-7BBD8CC07412*; NetChoice Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/NetChoice%20on%20IANA%20Contract.pdf*; Shawn Gunnarson at 7 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=050ECD10-F12C-47E3-AE78-793AFE1F67E0.*

[5] *See e.g.,* Country Code Names Supporting Organization (ccNSO) Comments at 2 (March 29, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/ACF31A.pdf*; Internet Architecture Board (IAB) Comments at 2 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=5EBBB0ED-CBE1-44EA-9FAF-0AFC662A1534*; Internet Society (ISOC) Comments at 2 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/ISOC%20Response_Docket%20110207099-1099-01.pdf.*

[6] *See* ICANN Comments at 3 (March 25, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/ACF2EF.pdf*; European Telecommunications Network Operators (ETNO) Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=0658E8D9-D4A9-4121-B7D9-4E26A9587859*; Minds and Machines Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=994F7CBE-F46D-45B8-82E1-BABCAE6046A2.*

[7] *See* Canadian Internet Registration Authority (CIRA) Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=68F1E2E0-5671-4F26-9770-1701FD41BBE2*, Coalition for Online Accountability (COA) Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=68F1E2E0-5671-4F26-9770-1701FD41BBE2*; International Trade Mark Association (INTA) Comments at 3 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/Comments%20of%20the%20International%20Trademark%20Association%20%28INTA%29.pdf*; Tech Freedom Comments at 2 (April 1, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/IANA%20NOI%20Comments%20-Final.pdf*; PayPal Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/PayPal-NTIA-Response.pdf.*

stakeholder group be established to manage the IANA functions without the involvement of NTIA.[8] Other commenters suggested the IANA Functions Operator should become an independent organization.[9]

Commenters also expressed their views on the current contractual framework. Some commenters suggested that the IANA functions contract be transitioned to a Cooperative Agreement. Some commenters raised concerns that short-term contracts create instability in the IANA functions process and would prefer to see longer contracts.

NTIA Response: As stated in the NOI, NTIA is committed to the multi-stakeholder process as an essential strategy for dealing with Internet policy issues. However, there is a need to address how all stakeholders, including governments collectively, can operate within the paradigm of a multi-stakeholder environment and be satisfied that their interests are being adequately addressed. Resolving this issue is critical to a strong multi-stakeholder model and to ensure the long-term political sustainability of an Internet that supports the free flow of information, goods, and services. NTIA's continued commitment to openness and transparency and the multi-stakeholder model is evidenced by the manner in which it is proceeding with this procurement.

Given the Internet's importance to the world economy, it is essential that the underlying DNS of the Internet remain stable and secure. Consistent with the 2005 U.S. Principles on the Internet's Domain Name and Addressing System, the United States is committed to maintaining its historic role and will take no action that would adversely impact the effective and efficient operation of the DNS.[10] In addition, with this FNOI, NTIA reiterates that it is not in discussions with ICANN to transition the IANA functions nor does the agency intend to undertake such discussions.[11]

NTIA does not have the legal authority to enter into a cooperative agreement with any organization, including ICANN, for the performance of the IANA functions.[12] In addition, NTIA does not view the previously awarded IANA functions contracts as short-term contracts. Typical contracts are for one year, while the previous IANA functions contracts had terms, once options were exercised, of five years.

Question 1: The IANA functions have been viewed historically as a set of interdependent technical functions and accordingly performed together by a single entity. In light of technology changes and market developments, should the IANA functions continue to be treated as interdependent? For example, does the coordination of the assignment of technical protocol parameters need to be done by the same entity that administers certain responsibilities associated with root zone management? Please provide specific information to support why or why not, taking into account security and stability issues.

Commenters were divided on whether the IANA functions should be separated. Some commenters opposed the idea of splitting the IANA functions and having the functions managed by separate organizations.[13] These commenters emphasized the need for keeping the functions together to ensure Internet stability and security, to capture the synergy and interdependencies between the functions, and to obtain the benefits of economies of scale and efficiency by operating the functions together.[14] Other commenters supported separating the functions, citing the absence of any underlying technical or critical Internet security or stability reason for keeping them together.[15] Other commenters opposed the current contractor's role in INT and ARPA TLD registry operations, noting that such registry operations are in conflict with ICANN's bylaws.[16] These commenters believed a plan should be put in place to separate the management of INT and ARPA TLDs from the IANA functions contract.[17] However, some commenters noted the interdependency of the ARPA TLD with the other IANA functions such as protocol parameters (*e.g.,* URI.ARPA) as well as address related information (*e.g.,* IN–ADDR.ARPA, IP6.ARPA).[18] These commenters do not believe the ARPA TLD should be separated from the other IANA functions.[19] A number of commenters stated that separation of the IANA functions must be approached with caution and consultation.[20] Further, commenters stated that if the

[8] *See* China Internet Network Information Center (CNNIC) Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=3A835CB9-68ED-4ABF-A376-7A4FF0F430A6*; Kenya Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/Kenya%20comments%20on%20Notice%20of%20Inquiry%20by%20NTIA%20on%20IANA%20Contract%20v4.pdf*; United Arab Emirates (UAE) Comments at 3 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=9342F887-C549-4A01-AB56-D50F1C7460DF*.

[9] *See e.g.,* Internet Governance Capacity Building (IGCBP) 2011 Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=AB73A9F5-4283-4783-9E10-D547EE1D9179*.

[10] In 2005, NTIA issued a statement of U.S. Principles on the Internet's Domain Name and Addressing System, available at *www.ntia.doc.gov/ntiahome/domainname/USDNSprinciples_06302005.pdf*.

[11] In 2008, NTIA sent a letter to ICANN stressing that the United States Government, while open to operational efficiency measures that address governments' legitimate public policy and sovereignty concerns with respect to the management of their country code top-level domains, ''has no plans to transition management of the authoritative root zone file to ICANN.'' Letter from Meredith Baker, Acting Assistant Secretary for Communications and Information, U.S. Department of Commerce, to Peter Dengate-Thrush, ICANN Chairman of the Board (July 30, 2008), available at *http://www.ntia.doc.gov/comments/2008/ICANN_080730.html*.

[12] Cooperative agreements are a form of Federal financial assistance. Federal agencies are required to have specific legislative authority to make Federal financial assistance awards. NTIA does not have specific legislative authority to make Federal financial assistance awards in the area of Internet domain name services. Federal agencies, however, have inherent authority to procure goods and services. Thus, NTIA and previously the Defense Advanced Research Projects Agency have been able to obtain the performance of the IANA functions under contract since the 1970s.

[13] *See* IAB Comments at 1; ccNSO Comments at 1; ISOC Comments at 2; SIDN Comments at 3 (April 1, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/SIDN%20position%20NTIA%20NoI%20IANA%20March%202011.pdf;* ICANN Comments at 8; The Number Resource Organization (NRO) Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=519C0531-4C81-4761-9FCC-9AF8D47BC69C*.

[14] *See* IAB Comments at 1; ICANN Comments at 8; ictQatar Comments at 1; UAE Comments at 5.

[15] *See* Internet New Zealand (InternetNZ) Comments at 3 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/NTIA%20Submission%20-%20IANA%20NOI.pdf;* Bill Manning Comments at 1 (March 11, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=8B430831-4634-4A6B-845B-97673CD97842*.

[16] *See* Bill Manning Comments at 1; Tech Freedom Comments at 8.

[17] *See* Christopher Wilkinson Comments at 2 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/NTIA_IANA_NOI_2.pdf;* Jean-Jacques Subrenat, Beau Brendler, and Eric Brunner-Williams Comments at 7 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=E17DCD8A-B324-4979-9359-4FA67E9429D5;* NetChoice Comments at 3; Tech Freedom Comments at 9.

[18] *See* Cisco Comments at 4; IAB Comments at 4; Netnod Comments at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=7EEEB455-7C85-4B20-B7A4-13ECE382F210*.

[19] *See* Cisco Comments at 4; IAB Comments at 4; Netnod Comments at 2.

[20] *See* ccNSO Comments at 1; Hong Kong Internet Registration Corporation Ltd (HKIRC) Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/HKIRC%20Response%20to%20NTIA%20NoI%20on%20IANA%20functions.pdf*.

IANA functions were to be performed by a different entity or separated, it would be important to clearly articulate, and build in sufficient time, for the community and all involved organizations to understand the change in order to avoid user confusion, deliver improvements to service efficiencies, and react appropriately.[21]

NTIA Response: NTIA concludes that these three core functions should remain bundled for now and be performed by a single entity. In reaching this conclusion, we give substantial weight to the fact that the entities that could most likely independently perform any of the functions, if unbundled, support keeping the functions together. NTIA also agrees with those commenters that stated there is an associative relationship between the ARPA TLD and the protocol parameter and Internet numbering resources. Therefore, the management of the ARPA TLD will continue to be bundled with the IANA functions. NTIA, however, sees merit in further exploring separating the management of the INT TLD from the IANA functions contract, and have included in the Draft SOW at paragraph C.2.2.1.5.2 language to provide a process for doing so. NTIA will conduct a public consultation next year to see how best to transition the INT TLD.

Question 2: The performance of the IANA functions often relies upon the policies and procedures developed by a variety of entities within the internet technical community such as the IETF, the RIRS and CCTLD operators. Should the IANA functions contract include references to these entities, the policies they develop and instructions that the contractor follow the policies? Please provide specific information as to why or why not. If yes, please provide language you believe accurately captures these relationships.

Some commenters believe it appropriate to reference the entities and relevant stakeholders responsible for the development of policies and procedures related to the IANA functions in the IANA functions contract. Commenters that supported this approach also expressed caution that referencing other entities and stakeholders could be perceived as expanding the scope of the IANA functions and lead to the contractor asserting unnecessary authority over those stakeholders.[22] Commenters noted that any reference, if included, needs to be able to evolve as the Internet multi-stakeholder model evolves.[23] Some commenters stated that the IANA functions contractor should not be involved in policy development discussions and suggested that the IANA functions contract recognize the distinction between acting in accordance with versus developing policy for each discrete IANA function.[24]

NTIA Response: NTIA recognizes that the IANA functions contractor, in the performance of its duties, requires close constructive working relationships with all interested and affected parties if it is to ensure quality performance of the IANA functions. NTIA agrees with suggestions by commenters that there must be functional separation between the processing of the IANA functions and the development of associated policies. As such, the Draft SOW includes paragraph C.2.2.1.1, which requires that all staff dedicated to executing the IANA functions remain separate and removed from any policy development that occurs related to the performance of the IANA functions.

Question 3: Cognizant of concerns previously raised by some governments and CCTLD operators and the need to ensure the stability of and security of the DNS, are there changes that could be made to how root zone management requests for CCTLDS are processed? Please provide specific information as to why or why not. If yes, please provide specific suggestions.

Commenters provided comments on the root zone management process related to country code top-level domains (ccTLDs), including Internationalized Domain Name ccTLD (IDN ccTLDs), as well as generic TLDs (gTLDs). The comments were diverse, but contained a few common themes. One common theme related to how and who developed policies and procedures affecting ccTLDs, IDN ccTLDs, and gTLDs.[25] In addition some commenters were of the view that the introduction of new gTLDs should be carried out in the interest and for the benefit of the global Internet community.[26] If a conflict arose with regard to public policy issues arising from specific gTLD proposals, some commenters asserted that ICANN's Government Advisory Committee (GAC) should provide input.[27] Some commenters stated that ICANN's Country Code Names Supporting Organization (ccNSO), ccTLD operators/managers, ICANN's Generic Names Supporting Organization (GNSO) and the GAC should develop policies and procedures related to ccTLDs, IDN ccTLDs, and gTLDs and not the IANA functions contractor.[28] In fact, when determining matters regarding delegation and redelegation of domain names, some commenters recommended that no decision should be made without the consultation with or consent of GAC, ccNSO, and/or relevant ccTLD operators.[29] Many comments focused on the lack of consistency in the current delegation and redelegation process and procedures.[30] The NOI record reflects support for the ccNSO's ongoing development of a ''Framework of Interpretation'' [31] process that would provide guidance to the IANA functions contractor on how to interpret the range of policies, guidelines, and procedures relating to the delegations and redelegations of ccTLDs.[32] Another

[21] *See* ISOC Comments at 2; Paul Kane Comments at 2 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/IANA-NoI.pdf.*

[22] *See* Dmitry Burkov Comments at 1 (March 26, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=0922CC0D-62FF-4A91-90A8-C87C8CFA9527;* ISOC Comments at 3.

[23] *See* ictQatar Comments at 2.

[24] *See* Coalition Against Domain Name Abuse (CADNA) at 2 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=0EF012AA-6B7D-4DAC-8E2A-8C871A182CC7;* IAB Comments at 5; InternetNZ Comments at 2; Internet Governance Project Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=A9CC728A-75A7-4898-AA66-70B6B3656CDD.*

[25] *See* ccNSO Comments at 1; Fahd A. Batayneh Comments at 1 (April 1, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=34B162CD-1B19-470F-B257-BBA8B19991C8;* InternetNZ Comments at 2; Federal Office of Communications (OFCOM) and SWITCH Comments at 4 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/Response-NTIA-IANA-NoI-2011_31113_05.pdf;* Tech Freedom Comments at 7.

[26] *See* Dmitry Burkov Comments at 1; COA Comments at 2.

[27] *See* Google Comments at 4 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=A3F206A1-CDE5-4F2D-BC50-E0FCF9DF384C.*

[28] *See* Asia Pacific Top Level Domain Association (APTLD) Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=FFB3621F-CC64-4E33-92E9-0CF7920BF8DA;* InternetNZ at 4; OFCOM and SWITCH Comments at 4.

[29] *See* Ken-Ying Tseng Lee and Li Comments at 1 (March 29, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=D6DDA78C-3994-4492-A46B-9486A5B10798.*

[30] ccNSO Comments at 3; InternetNZ Comments at 3; Nominet Comments at 2 (March 30, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=46E70603-6139-4106-B74E-CBDB5C66A7BE;* SIDN Comments at 3.

[31] For more information on the ccNSO Framework, *see* Charter FoI WG (Adopted 16 March 2011), available at *http://ccnso.icann.org/workinggroups/charter-foiwg-16mar11-en.pdf.*

[32] *See* ccNSO Comments at 2; ICANN Comments at 11; ISOC Comments at 3; InternetNZ Comments at 3; Nominet Comments at 2.

theme focused on automating root zone management processes. Some commenters addressed the need for full automation and development of audit trails in the root zone management process.[33] For some commenters, full automation is an automatic, secure, and authenticated process that allows root zone changes to be made directly by the Registry Managers.[34] Commenters stated that automating the root zone management process must be a priority for all three root zone management partners.[35] This was emphasized in particular due to the impending expansion of gTLDs.

NTIA Response: NTIA recognizes that policies, technical standards, and procedures related to each of the IANA functions are developed outside the purview of the IANA functions contract and should be implemented. Since these policies affect a critical part of the Internet infrastructure, NTIA believes that these policies must be clear and concise to allow the IANA functions contractor to operate in accordance with the policies developed by the relevant stakeholders. To address this concern the Draft SOW includes a new paragraph C.2.2.1.3.2 (Responsibility to and Respect of Stakeholders) that requires the contractor, in consultation with all relevant stakeholders, to develop a process for documenting the source of the policies and procedures and how it has applied the relevant policies and procedures in processing all TLD requests.

In addition, NTIA agrees with commenters that there has been a lack of clarity in delegation and redelegation policies, process, and procedures. NTIA fully supports the work of the ccNSO's development of a ''Framework of Interpretation'' process and believes this process will in the future provide much needed guidance to the IANA functions contractor when processing delegation and redelegation requests for ccTLDs.

Furthermore, NTIA agrees with commenters that the inconsistencies in delegation and redelegation policies might not have occurred if there had been functional separation between execution of the IANA functions and the associated policy development processes. To address this issue, as previously noted, the Draft SOW includes a paragraph C.2.2.1.1 that requires that all staff dedicated to executing the IANA functions remain separate and removed from any policy development that occurs related to the performance of the IANA functions.

NTIA also supports commenters' views that it is critical that the introduction of individual new gTLDs reflects community consensus among relevant stakeholders and is in the global public interest. As such, the Draft SOW includes, in paragraph C.2.2.1.3.2, a requirement that delegation requests for new gTLDs include documentation demonstrating how the string proposed reflects consensus among relevant stakeholders and is supportive of the global public interest.

NTIA likewise supports commenters' views that the IANA functions contractor be required to document the source of relevant policies and procedures when processing requests for delegation and redelegation of a TLD in such a manner to be consistent with relevant national laws of the jurisdiction which the registry serves. The Draft SOW addresses this issue in paragraph C.2.2.1.3.2, which requires the contractor to act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves.

NTIA notes that, while not directly stated by commenters, the technical process for deploying TLDs in the root zone is the same for ccTLDs and gTLDs. NTIA agrees with commenters that automating the root zone management process must be a priority especially with the increased workload associated with the introduction of new gTLDs. In the third quarter of 2011, the current root zone management partners will launch the Root Zone Management System (RZMs). RZMs is intended to automate some aspects of the process that are currently performed manually. This should improve the overall processing time and current accuracy of the root zone management function. As identified and recommended by a number of commenters, the Draft SOW includes paragraph C.2.2.1.3.3 (Root Zone Automation), which requires a minimum set of automated functions for a root zone automation system. NTIA believes this modification will address commenters' concerns regarding secure communications as well. While the Draft SOW does not require full automation of the root zone management process, NTIA plans to conduct public consultation next year to ascertain how best to fully automate the root zone management process.

As for the requirement of audit trails identified by commenters, the Draft SOW now includes a new paragraph C.5.2 (Root Zone Management Audit Data), which requires that the contractor generate a monthly audit report to track each root zone change request and include the identification of the policy under which the changes were made.

Question 4: Broad performance metrics and reporting are currently required under the contract. Are the current metrics and reporting requirements sufficient? Please provide specific information as to why or why not. If not, what specific changes should be made?[36]

Transparency was a major theme raised in the responses to this question. Some comments called for complete transparency in the IANA functions process. Commenters suggested that relevant stakeholders develop performance metrics for each discrete IANA function and that performance results be published monthly.[37] Some suggested that the performance metrics for root zone management include: the number of change requests, the number of requests declined due to noncompliance, and a report on statistics for global deployment of IPv6 and DNSSEC.[38] Some commenters noted the absence of Service Level Agreements (SLAs), especially for the root zone management and IP addressing functions and suggested that SLAs be developed in collaboration with the communities they serve.[39] Commenters suggested that SLAs could include framework parameters, service levels, and responsibilities relating to root zone management.[40] Some commenters stated that root zone management documentation should be published in all six United Nations' languages.[41] The NOI record reflects some commenters' concern regarding

[33] ccNSO Comments at 3; InternetNZ Comments at 3; Nominet Comments at 2; SIDN Comments at 3.

[34] CENTR Comments at 8 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=77DDAEE0-C79B-4E78-A706-FEC09F89DE78;* Paul Kane Comments at 3; AFNIC Comments at 3.

[35] ccNSO Comments at 3; InternetNZ Comments at 3; Nominet Comments at 2; SIDN Comments at 3.

[36] Commenters believed that Questions 2, 3, 4, and 5 were closely related. *See* e.g., ccNSO Comments at 4; CENTR Comments at 3.

[37] *See* ARIN Comments at 3–4 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=9BEFA8A5-655F-4AE5-95AA-66BED9A9F2C4;* ccNSO Comments at 4; ISOC Comments at 4; SIDN Comments at 5.

[38] *See* Hutchinson Comments at 1 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/attachments/NTIA%20NOI%20on%20IANA.pdf.*

[39] *See* ARIN Comments at 3; ccNSO Comments at 4; CNNIC at 1; InternetNZ Comments at 5; Kenya Comments at 3; SIDN Comments at 5.

[40] *See* ccNSO Comments at 4; SIDN Comments at 5.

[41] *See* ALAC Comments at 7 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=7669299A-100A-4A45-AEC7-E236AA41E643;* AFNIC Comments at 3 (March 31, 2011), available at *http://www.ntia.doc.gov/comments/110207099-1099-01/comment.cfm?e=513BA51F-85C2-43BD-B6EB-E50F5DC724BD;* CENTR Comments at 3; Kenya at 3.

the unknown operational costs of coordinating the IANA functions. Some commenters stated that more detailed and open financial reports for the IANA functions are necessary.[42] These commenters recommended the IANA functions contractor be required to develop a process for tracking costs.[43]

NTIA Response: NTIA agrees with commenters that there should be transparency and accountability in the performance of the IANA functions. NTIA supports commenters' views that the IANA functions contractor should meet certain performance standards for each discrete IANA function and that these performance standards and metrics should be developed in conjunction with the relevant stakeholders for these services. NTIA, however, does not support the development of specific SLAs with each stakeholder or groups of stakeholders. Given that the IANA functions are performed under contract with the U.S. Government, such agreements would be subject to government procurement laws and regulations. NTIA believes that the concerns expressed by commenters can be addressed without the formality of such agreements. Accordingly, NTIA provides language in paragraphs C.2.2.1.2, C.2.2.1.3, C.2.2.1.4 and C.2.2.1.5 of the Draft SOW to require that the IANA functions contractor develop performance standards and metrics for each discrete IANA functions in consultation with the relevant stakeholders.

The IANA functions contract has traditionally been performed at no cost to the United States Government. Under the current contract, the contractor may establish and collect fees from third parties to cover the costs of its performance of the IANA functions. The fees must be fair and equitable, and in the aggregate, cannot exceed the cost of providing the services. The Government has reserved the right to review the contractor's accounting data at any time fees are charged to verify that these conditions are being met.

The U.S. Government cannot require a contractor to release information to the public that it considers to be business confidential and/or proprietary, which may include its costs for the provision of service. It can, however, ensure that any fees charged are reasonable and cost-based. Accordingly, it is NTIA's intention to award any future contract with the same requirements that all fees are fair and equitable, and the right to review the contractor's accounting data to ensure that these requirements are met.

The NOI record reflects a recommendation that the IANA functions contractor be required to gather and report on statistics regarding global IPv6 and DNSSEC deployment. NTIA has not included this as a requirement in the Draft SOW because it is not clear whether there is consensus to include this as a new requirement of the IANA functions contract or rather whether this is a matter for which the community seeks additional information through ICANN. NTIA asks specific questions on this issue below as part of this FNOI to obtain clarification.

Question 5: Can process improvements or performance enhancements be made to the IANA functions contract to better reflect the needs of users of the IANA functions to improve the overall customer experience? Should mechanisms be employed to provide formalized user input and/or feedback, outreach and coordination with the users of the IANA functions? Is additional information related to the performance and administration of the IANA functions needed in the interest of more transparency? Please provide specific information as to why or why not. If yes, please provide specific suggestions.

The NOI record demonstrates the need for transparency in the root zone management process.[44] Commenters stated that the root zone management process should be more open and transparent and include reporting on all root zone management partners' activities.[45] For example, commenters would like to see real time status of every root zone change request all the way through the process. This would include action taken at any given stage of the process flow for root zone management.[46] Some commenters stated there should be a process for ccTLDs to appeal root management zone decisions made by the IANA functions contractor, in the event it does not follow existing and documented policies.[47] They also noted the need for the IANA functions contractor to consistently interpret broad policy guidance such as RFC 1591, ICP–1 and the GAC ccTLD Principles and publish information that documents the root zone change request process.[48] Commenters suggested that the IANA functions contractor should better respect national sovereignty as it relates to ccTLDs, including the legitimate interests of governments, the local Internet communities, and the primacy of national laws, which have been clearly stated by the GAC in its ccTLD Principles, and the 2005 U.S. Principles on the Internet's Domain Name and Addressing System.[49] Some commenters also expressed an interest in an annual or biennial survey of the IANA functions customers to determine customer satisfaction.[50] The NOI record reflects commenters' concern whether ICANN will implement the new gTLD program in the interest and for the benefit of global Internet users, and if there are checks and balances on root zone changes to ensure the security and stability of the DNS.[51]

NTIA Response: NTIA agrees with statements made by commenters that the root zone management process should be more transparent to the users of the IANA functions. As a result, paragraph C.4.2 (Root Zone Management Dashboard) of the draft SOW requires the IANA functions contractor to work with NTIA and VeriSign to collaborate in the development and implementation of a dashboard to track the process flow for root zone management. The United States fully supports the fact that governments have a legitimate interest in the management of their ccTLDs. The United States is committed to working with the international community to address these concerns, bearing in mind the fundamental need to ensure stability and security of the Internet DNS. As stated earlier, NTIA plans to conduct public consultation next year to ascertain how best to fully automate the root zone management process.

NTIA supports the need for accountability with respect to root zone management decisions. Accordingly, as discussed above, NTIA has included provisions in the draft SOW at paragraph C.2.2.1.3.5 that requires the IANA functions contractor to establish a process that would allow customers to submit complaints regarding the root

[42] *See* AFNIC Comments at 3; CENTR Comments at 3; Netnod Comments at 3.

[43] *See* AFNIC Comments at 3; CENTR Comments at 3; Netnod Comments at 3.

[44] *See* ARIN Comments at 3–4; ccNSO Comments at 4; ISOC Comments at 4; SIDN Comments at 5.

[45] *See* ARIN Comments at 3–4; ccNSO Comments at 4; ISOC Comments at 4; SIDN Comments at 5.

[46] For a description of the current process flow, please see the diagram posted on NTIA's Web site at *http://www.ntia.doc.gov/DNS/CurrentProcessFlow.pdf.*

[47] *See* ccNSO Comments at 4; AFNIC Comments at 2.

[48] *See* ccNSO Comments at 5; CENTER Comments at 2; Kenya Comments at 2; SIDN Comments at 5; OFCOM and SWITCH Comments at 5.

[49] *See* ccNSO Comments at 5; SIDN Comments at 5; Paul Kane Comments at 4.

[50] *See* InternetNZ Comments at 7; ccNSO Comments at 4.

[51] *See* Dmitry Burkov Comments at 1; COA Comments at 2; Netchoice Comments at 4.

zone management process for resolution.

Lastly, NTIA agrees with commenters that the new gTLD program must benefit the global Internet users and not jeopardize the security and stability of the DNS. Accordingly, the draft SOW includes paragraph C.2.2.1.3.2 (Responsibility and Respect for Stakeholders) that provides checks and balances for TLD root zone management changes, to ensure the continued stability and security of the DNS.

Question 6: Should additional security considerations and/or enhancements be factored into requirements for the performance of the IANA functions? Please provide specific information as to why or why not. If additional security considerations should be included, please provide specific suggestions.

With respect to root zone management, some commenters recommended the IANA functions contractor utilize a secure communications system for customer communications that would include the following: better authentication processes for the receipt and management of change requests, a process for issuing confirmations, moving from open online forms to signed and secure mechanisms, better availability of information related to root zone management such as outages, and more notice of planned maintenance or new developments.[52] Some commenters recommended that the next IANA functions contract include a requirement that the performance of the IANA functions undergo a security audit annually by external, independent, specialized auditors against relevant international standards such as ISO 27001.[53] Commenters also expressed concern with describing in detail security considerations and/or enhancements in the IANA functions contract.[54] Some commenters recommended that, at a minimum, that the contract employ best practices in information security to ensure the protection of data and security and stability of its operations.[55] One commenter recommended the following be included in the next IANA functions contract: ''A requirement for regular external reviews of process and security using a number of methods including document audits, penetration testing and international standards benchmarking; the results of these reviews should be made public within a specified timeframe to allow for any corrective measures to be taken; a published disaster recovery plan for the operator that is regularly consulted upon; a documented emergency process for customers to follow if they are experiencing an emergency, which includes private emergency contact numbers for the operator to be contacted on.'' [56]

NTIA Response: NTIA agrees with commenters that the IANA functions contractor needs to be able to communicate with service recipients in a secure and confidential manner. NTIA notes, however, that the IANA functions contractor needs to have some flexibility in the manner in which it secures communications to accommodate the needs and capabilities of all service recipients. Accordingly, the paragraph C.3 (Security Requirements) requires the IANA functions contractor to implement a secure communications system and data storage system. NTIA considers the designation of a qualified Director of Security as key personnel and is an essential component of the Contractor's ability to provide secure data services. As a result, in paragraph C.3.5, NTIA will require the Contractor to designate a Director of Security and consult with NTIA on any changes in this critical position. During the procurement process, NTIA will also require the identification of this key personnel and a demonstration of their qualifications for the position prior to contract award.

NTIA supports commenters' recommendations that the IANA functions contractor work with the relevant community of each discrete IANA function to develop a Contingency and Continuity of Operations Plan (CCOP). Therefore, the Draft SOW contains paragraph C.3.6 (Contingency and Continuity of Operations Plan) to include this requirement.

NTIA also agrees with the recommendation that the performance of the IANA functions undergo an annual security audit by an external, independent specialized compliance auditor against relevant international standards such as ISO 27001. NTIA has included paragraph C.5 (Audit Requirements) in the Draft SOW to capture these audit concerns.

Draft Statement of Work (Draft SOW)

Below is the Draft SOW for which NTIA seeks comment. The Draft SOW details the work requirements for the IANA functions and when finalized, NTIA will incorporate it into the procurement process for the IANA functions contract.

C.1 Background

C.1.1 The U.S. Department of Commerce (DoC), National Telecommunications and Information Administration (NTIA) has initiated this agreement to maintain the continuity and stability of services related to certain interdependent Internet technical management functions, known collectively as the Internet Assigned Numbers Authority (IANA).

C.1.2 Initially, these interdependent technical functions were performed on behalf of the Government under a contract between the Defense Advanced Research Projects Agency (DARPA) and the University of Southern California (USC), as part of a research project known as the Tera-node Network Technology (TNT). As the TNT project neared completion and the DARPA/USC contract neared expiration in 1999, the Government recognized the need for the continued performance of the IANA functions as vital to the stability and correct functioning of the Internet.

C.1.3 The Government acknowledges that data submitted by applicants in connection with the IANA functions is confidential information. To the extent permitted by law, the Government shall accord any data submitted by applicants in connection with the IANA functions with the same degree of care as it uses to protect its own confidential information, but not less than reasonable care, to prevent the unauthorized use, disclosure, or publication of confidential information. In providing data that is subject to such a confidentiality obligation to the Government, the Contractor shall advise the Government of that obligation.

C.1.4 The Contractor, in the performance of its duties, has a need to have close constructive working relationships with all interested and affected parties including to ensure quality performance of the IANA functions. The interested and affected parties include, but are not limited to, the Internet Engineering Task Force (IETF) and the Internet Architecture Board (IAB), regional registries, country code top-level domain (ccTLD) operators/managers, governments, and the Internet user community.

C.2 Contractor Requirements

C.2.1 The Contractor must perform the required services for this contract as a prime Contractor, not as an agent or subcontractor. The Contractor shall not enter into any subcontracts for the performance of the services, or assign or

[52] *See* ccNSO Comments at 5; InternetNZ Comments at 6; SIDN Comments at 6.

[53] ARIN, at 5; ccNSO, at 5; SIDN, at 6.

[54] ISOC Comments at 5; IAB Comments at 6.

[55] ARIN Comments at 5; IAB Comments at 6; ISOC Comments at 6.

[56] *See* InternetNZ Comments at 5.

transfer any of its rights or obligations under this Contract, without the Government's prior written consent and any attempt to do so shall be void and without further effect. The Contractor must possess and maintain through the performance of this acquisition a physical address within the United States. The Government reserves the right to inspect the premises, systems, and processes of all security and operational components used for the performance of these requirements, which, in addition, shall all maintain physical residency within the United States.

C.2.2 The Contractor shall furnish the necessary personnel, material, equipment, services, and facilities, to perform the following requirements without any cost to the Government. The Contractor shall conduct due diligence in hiring, including full background checks. On or after the effective date of this purchase order, the Contractor may establish and collect fees from third parties (*i.e.,* other than the Government) for the functions performed under this purchase order, provided the fee levels are approved by the Contracting Officer before going into effect, which approval shall not be withheld unreasonably and provided the fee levels are fair and equitable and provided the aggregate fees charged during the term of this purchase order do not exceed the cost of providing the requirements of this purchase order. The Government will review the Contractor's accounting data at anytime fees are charged to verify that the above conditions are being met.

C.2.2.1 The Contractor is required to maintain the IANA functions, the Internet's core infrastructure, in a stable and secure manner. In performance of this purchase order, the Contractor shall furnish the necessary personnel, material, equipment, services, and facilities (except as otherwise specified), to perform the following IANA function requirements.

C.2.2.1.1 The Contractor shall ensure that any and all staff dedicated to executing the IANA functions remain separate and removed (not involved) from any policy development that occurs related to the performance of the IANA functions.

C.2.2.1.2 Coordinate The Assignment Of Technical Protocol Parameters—This function involves the review and assignment of unique values to various parameters (*e.g.,* operation codes, port numbers, object identifiers, protocol numbers) used in various Internet protocols. This function also includes the dissemination of the listings of assigned parameters through various means (including on-line publication) and the review of technical documents for consistency with assigned values. Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with relevant stakeholders for approval. Upon approval by the Contracting Officer's Technical Representative (COTR), the Contractor shall perform this task in compliance with approved performance standards and metrics. The performance of this function shall be in compliance with the performance exclusions as enumerated in Section C.6.

C.2.2.1.3 Perform Administrative Functions Associated With Root Zone Management—This function addresses facilitation and coordination of the root zone of the domain name system, with 24 hour-a-day/7 days-a-week coverage. This function includes receiving delegation and redelegation requests, and investigating the circumstances pertinent to those requests. This function also includes receiving change requests for and making routine updates to all top-level domains (TLDs) contact (including technical and administrative contacts), nameserver, and delegation signer (DS) resource record (RR) information as expeditiously as possible. Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with relevant stakeholders for approval. Upon approval by the COTR, the Contractor shall perform this task in compliance with approved performance standards and metrics. The performance of this function shall be in compliance with the performance exclusions as enumerated in Section C.6.

C.2.2.1.3.1 Transparency and Accountability—The Contractor shall process all requests for changes to the root zone and the authoritative root zone database, collectively referred to as ''IANA root zone management requests,'' promptly and efficiently. The Contractor shall, in collaboration with all relevant stakeholders, develop user documentation. The Contractor shall prominently post on its Web site the performance standards and metrics, user documentation, and associated policies.

C.2.2.1.3.2 Responsibility and Respect for Stakeholders—The Contractor shall, in collaboration with all relevant stakeholders for this function, develop a process for documenting the source of the policies and procedures and how it has applied the relevant policies and procedures, such as RFC 1591, to process requests associated with TLDs. In addition, the Contractor shall act in accordance with the relevant national laws of the jurisdiction which the TLD registry serves. For delegation requests for new generic TLDS (gTLDs), the Contractor shall include documentation to demonstrate how the proposed string has received consensus support from relevant stakeholders and is supported by the global public interest.

C.2.2.1.3.3 Root Zone Automation—The Contractor shall work with NTIA and VeriSign, Inc. (or any successor entity as designated by the U.S. Department of Commerce) to deploy an automated root zone management system within six (6) months after date of contract award. The automated system shall at a minimum include: secure (encrypted) system for customer communications; automated provisioning protocol allowing customers to develop systems to manage their interactions with the Contractor with minimal delay; an online database of change requests and subsequent actions whereby each customer can see a record of their historic requests and maintain visibility into the progress of their current requests; and a test system, which customers can use to check that their change request will meet the automated checks.

C.2.2.1.3.4 Root Domain Name System Security Extensions (DNSSEC) Key Management—The Contractor shall be responsible for the management of the root zone Key Signing Key (KSK), including generation, publication, and use for signing the Root Keyset.

C.2.2.1.3.5 Customer Service Complaint Resolution Process—The Contractor shall establish a process for IANA function customers to submit complaints for timely resolution.

C.2.2.1.4 Allocate Internet Numbering Resources—This function involves overall responsibility for allocated and unallocated IPv4 and IPv6 address space and Autonomous System Number (ASN) space. It includes the responsibility to delegate of IP address blocks to regional registries for routine allocation, typically through downstream providers, to Internet end-users within the regions served by those registries. This function also includes reservation and direct allocation of space for special purposes, such as multicast addressing, addresses for private networks as described in RFC 1918, and globally specified applications. Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with relevant stakeholders for approval. Upon approval by the COTR, the Contractor shall perform this task in

compliance with approved performance standards and metrics. The performance of this function shall be in compliance with the performance exclusions as enumerated in Section C.6.

C.2.2.1.5 Other services—The Contractor shall perform other IANA functions, including the management of the INT and ARPA TLDs. The Contractor shall also implement modifications in performance of the IANA functions as needed upon mutual agreement of the parties. The performance of this function shall be in compliance with the performance exclusions as enumerated in Section C.6.

C.2.2.1.5.1 ARPA TLD—The Contractor shall operate the ARPA TLD within the current registration policies for the TLD, including RFC 3172. The Contractor shall be responsible for implementing DNSSEC in the ARPA TLD consistent with the requirements of the relevant stakeholders for this function and approved by NTIA. Within six (6) months of award, the Contractor shall submit to NTIA performance standards and metrics developed in collaboration with relevant stakeholders. Upon approval by the COTR, the Contractor shall perform this task in compliance with approved performance standards and metrics.

C.2.2.1.5.2 INT TLD—The Contractor shall operate the INT TLD within the current registration policies for the TLD. Upon designation of a successor registry, if any, the Contractor shall use commercially reasonable efforts to cooperate with NTIA to facilitate the smooth transition of operation of the INT TLD. Such cooperation shall, at a minimum, include timely transfer to the successor registry of the then-current top-level domain registration data.

C.3 Security Requirements

C.3.1 Secure Systems—The Contractor shall install and operate all computing and communications systems in accordance with best business and security practices. The Contractor shall implement a secure system for authenticated communications between it and its customers when carrying out all IANA function requirements within nine (9) months after date of contract award. The Contractor shall document practices and configuration of all systems.

C.3.2 Secure Systems Notification—Within nine (9) months after date of contract award, the Contractor shall implement and thereafter operate and maintain a secure notification system at a minimum, capable of notifying all relevant stakeholders of the discrete IANA functions, of such events as outages, planned maintenance, and new developments.

C.3.3 Secure Data—The Contractor shall ensure the authentication, integrity, and reliability of the data in performing the IANA requirements, including the data relevant to DNS, root zone change request, and IP address allocation.

C.3.4 Computer Security Plan—The Contractor shall develop and execute a Security Plan. The plan shall be developed and implemented within nine (9) months after date of contract award, and updated annually. The Contractor shall deliver the plan to the Government annually.

C.3.5 Director of Security—The Contractor shall designate a Director of Security who shall be responsible for ensuring technical and physical security measures, such as personnel access controls. The Contractor shall notify and consult in advance the COTR when there are personnel changes in this position.

C.3.6 Contingency and Continuity of Operations Plan (The CCOP)—The Contractor shall, in collaboration with relevant stakeholders, develop and implement a CCOP for the IANA functions within nine (9) months after date of contract award. The Contractor shall update and exercise the plan annually. The CCOP shall include details on plans for continuation of the IANA functions in the event of a logical or physical attack or emergency. The Contractor shall deliver the CCOP to the Government annually.

C.4 Performance Metric Requirements

C.4.1 Monthly Performance Progress Report—The Contractor shall prepare and submit to the COTR a performance progress report every month (no later than 15 calendar days following the end of each month) that contains statistical and narrative information on the performance of the IANA functions (*i.e.,* assignment of technical protocol parameters administrative functions associated with root zone management and allocation of Internet numbering resources) during the previous 30-day period. The report shall include a narrative summary of the work performed for each of the functions with appropriate details and particularity. The report shall also describe major events, problems encountered, and any projected significant changes, if any, related to the performance of duties set forth in Section C.2.

C.4.2 Root Zone Management Dashboard—The Contractor shall collaborate with NTIA and VeriSign, Inc., (or any successor entity as designated by the U.S. Department of Commerce) to develop and make available a dashboard to track the process flow for root zone management within nine (9) months after date of contract award.

C.4.3 Performance Standards Metrics Reports—The Contractor shall develop and publish consistent with the developed performance standards and metrics reports for each discrete IANA function consistent with Section C.2. The Performance Standard Metric Reports will be published every month (no later than 15 calendar days following the end of each month) starting no later than nine (9) months after date of contract award.

C.4.4 Performance Survey—The Contractor shall develop and conduct an annual performance survey consistent with the developed performance standards and metrics for each of the discrete IANA functions. The survey shall include a feedback section for each discrete IANA function. The Contractor shall publish the Survey Report annually on its Web site.

C.4.5 Final Report—The Contractor shall prepare and submit a final report on the performance of the IANA functions that documents standard operating procedures, including a description of the techniques, methods, software, and tools employed in the performance of the IANA functions. The Contractor shall submit the report to the Contracting Officer and the COTR no later than 30 days after expiration of the purchase order.

C.5 Audit Requirements

C.5.1 Audit Data—The Contractor shall generate and retain security process audit record data for one year and provide an annual audit report to the Contracting Officer and the COTR. All root zone management operations shall be included in the audit, and records on change requests to the root zone file and the Contractor shall retain these records. The Contractor shall provide specific audit record data to the Contracting Officer and COTR upon request.

C.5.2 Root Zone Management Audit Data—The Contractor shall generate a monthly (no later than 15 calendar days following the end of each month) audit report based on information in the performance of *Provision C.2.2.1.3 Perform Administrative Functions Associated With Root Zone Management.* The audit report shall track each root zone change request and identify the relevant policy under which the change was made as well as track change rejections and identify the relevant policy under which the change

request was rejected starting no later than nine (9) months after date of contract award.

C.5.3 External Auditor—The Contractor shall have an external, independent, specialized compliance auditor conduct an audit of the IANA functions security provisions annually.

C.6 Performance Exclusions

C.6.1 This purchase order, in itself, does not authorize modifications, additions, or deletions to the root zone file or associated information. (This purchase order does not alter the root zone file responsibilities as set forth in Amendment 11 of the Cooperative Agreement NCR–9218742 between the DoC and VeriSign, Inc.)

C.6.2 This purchase order, in itself, does not authorize the Contractor to make material changes in the policies and procedures developed by the relevant entities associated with the performance of the IANA functions. The Contractor shall not change or implement the established methods associated with the performance of the IANA functions without prior approval of the COTR.

C.6.3 The performance of the functions under this contract, including the development of recommendations in connection with processing changes that constitute delegations and redelegations of ccTLDs, shall not be, in any manner, predicated or conditioned on the existence or entry into any contract, agreement or negotiation between the Contractor and any party requesting such changes or any other third-party.

Questions Related to the Draft SOW

The public is invited to comment on any aspect of the Draft SOW including, but not limited to, the specific questions set forth below. When responding to specific questions, please cite the number(s) of the questions addressed, the ''section'' of the Draft SOW to which the question(s) correspond, and provide any references to support the responses submitted.

1. Does the language in ''Provision C.1.3'' capture views on how the relevant stakeholders as sources of the policies and procedures should be referenced in the next IANA functions contract. If not, please propose specific language to capture commenters' views.

2. Does the new ''Provision C.2.2.1.1'' adequately address concerns that the IANA functions contractor should refrain from developing policies related to the IANA functions? If not, please provide detailed comments and specific suggestions for improving the language.

3. Does the language in ''Provisions C.2.2.1.2, C.2.2.1.3, C.2.2.1.4, and C.2.2.1.5'' adequately address concerns that the IANA functions contractor should perform these services in a manner that best serves the relevant stakeholders? If not, please propose detailed alternative language.

4. Does the language in ''Provision C.2.2.1.3'' adequately address concerns related to root zone management? If not, please suggest detailed alternative language. Are the timeframes for implementation reasonable?

5. Does the new ''Provision C.2.2.1.3.2 Responsibility and Respect for Stakeholders'' adequately address concerns related to the root zone management process in particular how the IANA functions contractor should document its decision making with respect to relevant national laws of the jurisdiction which the TLD registry serves, how the TLD reflects community consensus among relevant stakeholders and/or is supported by the global public interest. If not, please provide detailed suggestions for capturing concerns. Are the timeframes for implementation reasonable?

6. Does the new ''Section C.3 Security Requirements'' adequately address concerns that the IANA functions contractor has a secure communications system for communicating with service recipients? If not, how can the language be improved? Is the timeframe for implementation reasonable?

7. Does the new ''Provision C.2.2.1.3.5 Customer Service Complaint Resolution Process'' provide an adequate means of addressing customer complaints? Does the new language provide adequate guidance to the IANA functions contractor on how to develop a customer complaint resolution? If not, please provide detailed comments and suggestions for improving the language.

8. Does the new ''Provision C.3.6 Contingency and Continuity of Operations Plan (CCOP)'' adequately address concerns regarding contingency planning and emergency recovery? If not, please provide detailed comments and suggestions for improving the language. Are the timeframes for implementation reasonable?

9. Does the new ''Section C.4 Performance Standards Metric Requirements'' adequately address concerns regarding transparency in root zone management process, and performance standards and metrics? Should the contractor be required to gather and report on statistics regarding global IPv6 and DNSSEC deployment? If so, how should this requirement be reflected in the SOW? What statistics should be gathered and made public?

10. Does the new ''Section C.5 Audit Requirements'' adequately address concerns regarding audits? If not, please propose alternative language. Are the timeframes for implementation reasonable?

Dated: June 9, 2011.

Lawrence E. Strickling,

Assistant Secretary for Communications and Information.

[FR Doc. 2011–14762 Filed 6–13–11; 8:45 am]

BILLING CODE 3510–60–P

COMMODITY FUTURES TRADING COMMISSION

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64638; File Nos. 4–633 and S7–39–10]

Joint Public Roundtable on Proposed Dealer and Major Participant Definitions of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

AGENCIES: Commodity Futures Trading Commission (''CFTC'') and Securities and Exchange Commission (''SEC'') (each, an ''Agency,'' and collectively, the ''Agencies'').

ACTION: Notice of roundtable discussion; request for comment.

SUMMARY: On Thursday, June 16, 2011, commencing at 9 a.m. and ending at 3:45 p.m., staff of the Agencies will hold a public roundtable meeting at which invited participants will discuss various issues related to the proposed definitions of the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' and ''major security-based swap participant'' under Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Act''). *See* 75 FR 80174 (Dec. 21, 2010). The discussion will be open to the public with seating on a first-come, first-served basis. Members of the public may also listen to the meeting by telephone. Call-in participants should be prepared to provide their first name, last name and affiliation. The information for the conference call is set forth below.

- *U.S. Toll-Free:* (866) 844–9416.
- *International Toll:* information on international dialing can be found at the following link: *http://www.cftc.gov/PressRoom/PressReleases/internationalnumbers021811.html.*
- *Conference ID:* 7731946.

A transcript of the public roundtable discussion will be published at *http://www.cftc.gov/PressRoom/Events/2011/index.htm.* The roundtable discussion will take place in the Conference Center at the CFTC's headquarters, Three

Lafayette Centre, 1155 21st Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: The CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

SUPPLEMENTARY INFORMATION: The roundtable discussion will take place on Thursday, June 16, 2011, commencing at 9 a.m. and ending at 3:45 p.m. Members of the public who wish to comment on the topics addressed at the discussion, may do so via:

- Paper submission to David Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, or Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; or
- Electronic submission via visiting *http://comments.cftc.gov/PublicComments/ReleasesWithComments.aspx* and submitting comments through the CFTC's Web site; and/or by e-mail to *rule-comments@sec.gov* (all e-mails must reference the file numbers 4–633 and S7–39–10 in the subject field) or through the comment form available at: *http://www.sec.gov/rules/other.shtml.*

All submissions will be reviewed jointly by the Agencies. All comments must be in English or be accompanied by an English translation. All submissions provided to either Agency in any electronic form or on paper will be published on the Web site of the respective Agency, without review and without removal of personally identifying information. Please submit only information that you wish to make publicly available.

Dated: June 9, 2011.

By the Commodity Futures Trading Commission.

David A. Stawick,

Secretary.

Dated: June 9, 2011.

By the Securities and Exchange Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–14729 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 15, 2011.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. 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 Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Information Management and Privacy Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title of Collection: Protection and Advocacy of Individual Rights (PAIR) Program Assurances.

OMB Control Number: 1820–0625.

Agency Form Number(s): N/A.

Frequency of Responses: Submitted once prior to FY 2007, and thereafter only upon the redesignation of the P&A.

Affected Public: Not-for-profit institutions.

Total Estimated Number of Annual Responses: 57.

Total Estimated Number of Annual Burden Hours: 9.

Abstract: Section 509 of the Rehabilitation Act of 1973, as amended (act), and its implementing Federal Regulations at 34 CFR Part 381, require the Protection and Advocacy of Individual Rights (PAIR) grantees to submit an application to the Rehabilitation Services Administration (RSA) Commissioner in order to receive assistance under Section 509 of the act. The act requires that the application contain Assurances to which the grantee must comply. Section 509(f) of the act specifies the Assurances. There are 57 PAIR grantees. All 57 grantees are required to be part of the protection and advocacy system in each State established under the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 6041 *et seq.*).

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4638. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2011–14644 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records 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 July 14, 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: June 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision

Title of Collection: Experimental Sites Initiative—Data Collection Instrument

OMB Control Number: 1845–0066

Agency Form Number(s): N/A

Frequency of Responses: Annually

Affected Public: State, Local, or Tribal Government, State Educational Agencies or Local Educational Agencies

Total Estimated Number of Annual Responses: 85

Total Estimated Annual Burden Hours: 935

Abstract: This data collection instrument will be used to collect specific information/performance data for analysis of seven experiments. This effort will assist the Department in obtaining and compiling information to help determine change in the administration and delivery of Title IV programs. Institutions volunteer to become an experimental site to provide recommendations on the impact and effectiveness of proposed regulations or new management initiatives.

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 4524. 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. 2011–14645 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Director, Information Collection Clearance Division, Privacy, Information and Records 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 July 14, 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: June 8, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Department of Education

Type of Review: Extension

Title of Collection: Generic Plan for Customer Satisfaction Surveys and Focus Groups

OMB Control Number: 1800–0011

Agency Form Number(s): N/A

Frequency of Responses: On occasion

Affected Public: Individuals or households

Total Estimated Number of Annual Responses: 451,326

Total Estimated Annual Burden Hours: 114,885

Abstract: Surveys to be considered under this generic will only include those surveys that improve customer

service or collect feedback about a service provided to individuals or entities directly served by Department of Education (ED). The results of these customer surveys will help ED managers plan and implement program improvements and other customer satisfaction initiatives. Focus groups that will be considered under the generic clearance will assess customer satisfaction with a direct service, or will be designed to inform a customer satisfaction survey ED is considering. Surveys that have the potential to influence policy will not be considered under this generic clearance.

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 4515. 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, D.C. 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. 2011–14646 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Gaining Early Awareness and Readiness for Undergraduate Programs; Notice inviting applications for new awards for fiscal year (FY) 2011.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.334A (Partnership grants).

DATES: *Applications Available:* June 14, 2011.

Deadline for Transmittal of Applications: July 14, 2011.

Deadline for Intergovernmental Review: September 12, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP program is a discretionary grant program that provides financial support for academic and related support services that eligible low-income students, including students with disabilities, need to enable them to obtain a secondary school diploma and to prepare for and succeed in postsecondary education.

Priorities: This notice contains two competitive preference priorities and one invitational priority.

Background: The President has set a clear goal for our education system: By 2020, the United States will once again lead the world in college completion. To achieve this goal, the Department has consistently encouraged four key reforms to improve elementary and secondary education—in particular the Department is seeking to: improve the effectiveness of teachers and school leaders and promote equity in the distribution of effective teachers and school leaders; strengthen the use of data to improve teaching and learning; provide high-quality instruction based on rigorous college- and career-ready standards and measure students' mastery of standards using high-quality assessments aligned with those standards; and turn around the lowest-performing schools.

The Department views the GEAR UP program as a critical component in the effort to improve the quality of secondary schools so that more students are well prepared for college and careers. In order to more strategically align GEAR UP with these overarching reform strategies for school improvement, the Department is announcing two competitive preference priorities for this competition. The Department also proposes one invitational priority for this competition.

We are using two priorities from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

The Department is using Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools because an essential element in strengthening our education system is dramatic improvement of student performance in each State's persistently lowest-achieving schools. These schools often require intensive interventions to improve the school culture and climate, strengthen the school staff and instructional program, increase student attendance and enrollment in advanced courses, provide more time for learning, and ensure that social services and community support are available for students in order to raise student achievement, graduation rates, and college enrollment rates. In addition, students in these schools can benefit from participating in programs, such as GEAR UP, that offer additional services designed to increase student success. The Department is interested in seeing strong plans to support improvements in student achievement and outcomes within these schools.

The Department is using Competitive Preference Priority 2—Enabling More Data-Based Decision-Making because the Department believes that the effective use of data for informed decision-making is essential to the continuous improvement of educational results. Specifically, this priority is for projects that are designed to provide educators, as well as families and other key stakeholders, with high-quality data and the capacity and training to use those data. The data may be used to respond to the learning and academic needs of students, increase student achievement (as defined in this notice), improve educator effectiveness, inform professional development practices and approaches, understand the culture and climate of their schools and institutions, and make informed decisions that increase overall program effectiveness. We believe that inclusion of this competitive preference priority is important because accurate, timely, relevant, and appropriate data are key to knowing what is working for students and what is not. Data can tell us which students are on track to college- and career-readiness and which students need additional support, which instructional strategies are working, which schools or institutions are successfully improving student learning and performance, and which teachers or faculty excel in increasing student achievement so that they can, for example, be given the opportunity to coach others or to lead communities of professional practice.

Competitive Preference Priorities. The competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference

priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 6 points (up to 3 points for each competitive preference priority) to an application, depending on how well the application meets these priorities.

These priorities are:

Competitive Preference Priority 1—Turning Around Persistently Lowest-Achieving Schools (Up to 3 additional points)

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

(c) Providing services to students enrolled in persistently lowest-achieving schools (as defined in this notice).

Competitive Preference Priority 2—Enabling More Data-Based Decision-Making (Up to 3 Additional Points)

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

(b) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

(c) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Note: Applicants proposing to use data to improve decision-making might want to consider demonstrating their ability to access the State's longitudinal data system for reporting postsecondary student outcomes and student outcomes in elementary and secondary schools. Examples of other data-based activities could include using course-taking trend data to structure interventions tailored to keep students 'on-track' to graduate from high school and prepared for postsecondary education or using such data to develop early warning indicator systems designed to prevent students from dropping out.

Invitational Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Financial Access and College Savings Accounts

Background: Research indicates that students with savings accounts may be up to seven times more likely to attend college, even when controlling for other factors (Elliot, Jung, and Friedline, 2010: *http://csd.wustl.edu/Publications/Documents/WP10-01.pdf*). Yet 25 percent of U.S. households (and 50 percent of Black and Hispanic households) are unbanked or underbanked, meaning that they either do not have a Federally-insured deposit account, or that they have an account but still rely on costly alternative financial services. Young adults are disproportionately unbanked and underbanked (*http://www.economicinclusion.gov/*). At the same time, a lack of financial literacy—such as overestimating the price of college, not applying for Federal student aid, and taking private education loans before exhausting Federal loans—is a major roadblock on the path to college access and success for too many students and families (*http://www2.ed.gov/legislation/FedRegister/announcements/2010-3/072610c.html*). Partially as a result of these findings, the Secretary of Education and the Chairmen of the Federal Deposit Insurance Corporation and the National Credit Union Administration announced, in November 2010, a new interagency agreement to increase partnerships among schools, financial institutions, and other stakeholders to help students gain access to deposit accounts, learn about money, and save for college. The Department's press statement on this partnership can be found at: *http://www.ed.gov/news/press-releases/fdic-and-ncua-chairs-join-education-secretary-announce-partnership-promote-finan* and the Secretary's recently recorded video encouraging participation at: *http://www.youtube.com/watch?v=uxOoXeOkh_w.*

Section 404D(b)(10)(E) of the HEA expressly authorizes GEAR UP program grantees to design projects that promote participating students' secondary school completion and enrollment in postsecondary education by means that include promotion of financial literacy and economic literacy education or counseling. Accordingly, and in keeping with the goals of the new interagency agreement, the Secretary specifically invites applications that address the following invitational priority.

Invitational Priority: The Secretary invites applications that propose, as part of their strategy for ensuring secondary school completion and postsecondary education enrollment of participating students, financial and economic literacy activities that include:

- Creation or enhancement of partnerships with financial institutions and/or other stakeholders that would (1) provide students with safe and affordable deposit accounts at Federally-insured banks or credit unions or other safe, affordable, and appropriate financial services, and (2) evaluate the success of these partnerships in meeting this objective; and
- Creation of financial or other incentives to increase savings by GEAR UP students and families of participating GEAR UP students.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and apply to the competitive preference priorities in this notice.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1), and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that: (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do

not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR Part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools.

(b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Program Authority: 20 U.S.C. 1070a–21—1070a–28.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR Part 694. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

Note: The regulations in 34 CFR Part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR Part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $102,211,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $100,000–$7,000,000.

Estimated Average Size of Awards: $1,161,489.

Maximum Award: We will reject any application for a partnership grant that proposes a budget exceeding $800 per student for a single budget period of 12 months. We also will reject any partnership grant application that proposes an increase in its budget after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change the maximum amounts through a notice published in the **Federal Register**.

Estimated Number of Awards: 88.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 84 months.

III. Eligibility Information

1. *Eligible Applicants:* Partnership consisting of (A) one or more local educational agencies (LEA), and (B) one or more degree granting institutions of higher education (IHE). Partnerships may also contain not less than two other community organizations or entities, such as businesses, professional organizations, State agencies, institutions or agencies sponsoring programs authorized under the Leveraging Educational Assistance Partnership (LEAP) Program authorized in part A, subpart 4, of title IV of the Higher Education Act of 1965, as amended (HEA) (20 U.S.C. 1070c *et seq.*), or other public or private agencies or organizations.

Note: The fiscal agent/applicant must be either an IHE or an LEA (see 34 CFR 694.10)

2. a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA requires partnership grantees under this program to provide from State, local, institutional, or private funds not less than 50 percent of the cost of the program (or $1 of non-Federal funds for every $1 of Federal funds awarded), which may be provided in cash or in-kind. The provision also provides that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress toward meeting the matching requirement in each year of the grant award period.

Section 404C(b)(2) further provides that the Secretary may approve a partnership's request for a reduced match percentage at the time of application if the partnership demonstrates significant economic hardship that precludes the partnership from meeting the matching requirement, or if the partnership requests that contributions to the scholarship fund be matched on a two-to-one basis. (See 34 CFR 694.8(a)–(c) for implementing regulations.) In addition, a partnership that includes three or fewer institutions of higher education as members and meets the high-need criteria in 34 CFR 694.8(d)(2) may provide a reduced level of match as specified in 34 CFR 694.8(d).

b. *Supplement-Not-Supplant:* This program includes supplement-not-supplant funding requirements. Under section 404B(e) of the HEA, grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program (20 U.S.C. 1070a–22).

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site at: *http://www2.ed.gov/programs/gearup/index.html.*

You also can request a copy of the application package from the following: Pariece Wilkins, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., Room 7025, Washington, DC 20006–8524. *Telephone:* (202) 219–7104 or by *e-mail: pariece.wilkins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part II) to no more than 45 pages. However, if you choose to address the invitational priority and/or the competitive preference priorities, you must limit your discussion on the invitational priority to only 4 additional pages and

discussion on the competitive preference priorities to only 10 additional pages above the 45-page narrative limitation. For purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicant must use the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

• Use a font that is either 12-point or larger, or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limits do not apply to the cover sheet; the budget section, including the budget narrative and summary form; the assurances and certifications; or the one-page abstract.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 14, 2011.

Deadline for Transmittal of Applications: July 14, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 12, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR Part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete. In addition, if you are submitting your application via Grants.gov, you must (1) Be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (*see www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the GEAR UP Partnership Grant Competition, CFDA number 84.334A, must be submitted electronically using the Governmentwide Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the GEAR UP Partnership Grant competition at *http://www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.334, not 84.334A).

Please note the following:

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after

4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov*.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.

• You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues With the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Pariece Wilkins, U.S. Department of Education, 1990 K Street, NW., Room 7025, Washington, DC 20006–8524. *FAX:* (202) 219–7074.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.334A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you

(or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.334A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR Part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The objectives of the GEAR UP Program are: (1) To increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase educational expectations for participating students and student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. Under the Government Performance and Results Act of 1993 (GPRA), we developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Pre-algebra by the end of 8th grade.

2. The percentage of GEAR UP students who pass Algebra 1 by the end of 9th grade.

3. The percentage of GEAR UP students who take two years of mathematics beyond Algebra 1 by the 12th grade.

4. The percentage of GEAR UP students who graduate from high school.

Note: For each GEAR UP project, the high school graduation rate is defined in the State's approved accountability plan under Part A of Title I of the ESEA.

5. The percentage of GEAR UP students and former GEAR UP students who are enrolled in college.

6. The percentage of GEAR UP students who place into college-level Math and English without need for remediation.

7. The percentage of current GEAR UP students and former GEAR UP students enrolled in college who are on track to graduate college.

8. The percentage of students and parents of GEAR UP students who demonstrate knowledge of available financial aid and the costs and benefits of pursuing postsecondary education.

Note: The Department will ask grantees to track and report on Free Application for Federal Student Aid (FAFSA) completion, and will update the survey currently used by grantees to assess knowledge of financial aid and the costs and benefits of pursuing postsecondary education.

9. The percentage of GEAR UP students who have knowledge of, and demonstrate, necessary academic preparation for college.

Note: This measure will be calculated using factors such as the percentage of GEAR UP students on track for graduation at the end of each grade, the percentage of GEAR UP students who complete the PLAN or PSAT by the end of the 10th grade, the percentage of GEAR UP students who complete the SAT or ACT by the end of 11th grade, and the percentage of GEAR UP students who have an unweighted grade point average (GPA) of at least 3.0 on a 4-point scale by the end of the 11th grade.

10. The percentage of parents of GEAR UP students who actively engage in activities associated with assisting

students in their academic preparation for college.

In addition, to assess the efficiency of the program, we track the average cost, in Federal funds, of achieving a successful outcome, where success is defined as enrollment in postsecondary education of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR UP's indicators of the success of the program. Grant recipients must collect and report data on steps they have taken toward achieving these goals. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pariece Wilkins, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., Room 7025, Washington, DC 20006–8524. *Telephone:* (202) 219–7104 or by *e-mail: pariece.wilkins@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.*

Dated: June 9, 2011.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–14736 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Applications for New Awards; Gaining Early Awareness and Readiness for Undergraduate Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information

Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2011

Catalog of Federal Domestic Assistance (CFDA) Number: 84.334S (State grants).

DATES: *Applications Available:* June 14, 2011.

Deadline for Transmittal of Applications: July 14, 2011.

Deadline for Intergovernmental Review: September 12, 2011.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The GEAR UP Program is a discretionary grant program that provides financial support for academic and related support services that eligible low-income students, including students with disabilities, need to enable them to obtain a secondary school diploma and to prepare for and succeed in postsecondary education.

Priorities: This notice contains four competitive preference priorities and one invitational priority.

Background: The President has set a clear goal for our education system: By 2020, the United States will once again lead the world in college completion. To achieve this goal, the Department has consistently encouraged four key reforms to improve elementary and secondary education—in particular the Department is seeking to: Improve the effectiveness of teachers and school leaders and promote equity in the distribution of effective teachers and school leaders; strengthen the use of data to improve teaching and learning; provide high-quality instruction based on rigorous college- and career-ready standards and measure students' mastery of standards using high-quality assessments aligned with those standards; and turn around the lowest-performing schools.

The Department views the GEAR UP program as a critical component in the effort to improve the quality of secondary schools so that more students are well prepared for college and careers. In order to more strategically align GEAR UP with these overarching reform strategies for school improvement, the Department is announcing four competitive preference priorities for this competition. The Department also proposes one invitational priority for this competition.

We are using three priorities from the Department's notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486).

The Department is using Competitive Preference Priority 2—Turning Around Persistently Lowest-Achieving Schools because an essential element in strengthening our education system is dramatic improvement of student performance in each State's persistently lowest-achieving schools. These schools often require intensive interventions to improve the school culture and climate, strengthen the school staff and instructional program, increase student attendance and enrollment in advanced courses, provide more time for learning, and ensure that social services and community support are available for students in order to raise student achievement, graduation rates, and college enrollment rates. In addition, students in these schools can benefit from participating in programs, such as GEAR UP, that offer additional services designed to increase student success. The Department is interested in seeing strong plans to support improvements in student achievement and outcomes within these schools.

The Department is using Competitive Preference Priority 3—Enabling More Data-Based Decisionmaking because the Department believes that the effective

use of data for informed decisionmaking is essential to the continuous improvement of educational results. Specifically, this priority is for projects that are designed to provide educators, as well as families and other key stakeholders, with high-quality data and the capacity and training to use those data. The data may be used to respond to the learning and academic needs of students, increase student achievement (as defined in this notice), improve educator effectiveness, inform professional development practices and approaches, understand the culture and climate of their schools and institutions, and make informed decisions that increase overall program effectiveness. We believe that inclusion of this competitive preference priority is important because accurate, timely, relevant, and appropriate data are key to knowing what is working for students and what is not. Data can tell us which students are on track to college- and career-readiness and which students need additional support, which instructional strategies are working, which schools or institutions are successfully improving student learning and performance, and which teachers or faculty excel in increasing student achievement so that they can, for example, be given the opportunity to coach others or to lead communities of professional practice.

Finally, we are using Competitive Preference Priority 4—Implementing Internationally Benchmarked, College- and Career-Ready Elementary and Secondary Academic Standards because the Department believes that the adoption of common, internationally benchmarked, college- and career-ready academic standards for elementary and secondary school students is key to ensuring that high schools graduate students with the skills and knowledge that prepare them to enroll in postsecondary education without the need for remediation and to successfully earn a postsecondary credential. Holding students to college- and career-ready academic standards, and providing them with the instructional materials and support they need to meet those standards, is particularly important for the low-income students served by GEAR UP who otherwise would be less likely to be ready for and successful in postsecondary education. Therefore, the Department is giving priority to States that have adopted such standards and that are proposing projects that will support their implementation by, for example, providing assistance to local educational agencies in transitioning to these new standards and including assistance in developing and implementing high-quality instructional materials, assessments aligned with the standards, teacher and principal preparation and professional development programs, and other strategies that translate the standards into classroom practice. The Department would like to see GEAR UP State applicants develop plans that would help students in schools served by their GEAR UP projects in meeting these new standards.

Competitive Preference Priorities. The first competitive preference priority is from section 404A(b)(3) of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a–21) and the GEAR UP program regulations in 34 CFR 694.19. The remaining three competitive preference priorities are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional 12 points to an application, depending on how well the application meets each priority.

These priorities are:

Competitive Preference Priority 1—Successful Completion of Prior GEAR UP Projects (Up to 2 Additional Points)

Consistent with section 404A(b)(3) of the Higher Education Act, as amended by the Higher Education Opportunity Act (Pub. L. 110–315)(HEA), and 34 CFR § 694.19, the Secretary gives priority to an eligible applicant for a State GEAR UP grant that has both: (a) Carried out a successful State GEAR UP grant prior to August 14, 2008, determined on the basis of data (including outcome data) submitted by the applicant as part of its annual and final performance reports, and the applicant's history of compliance with applicable statutory and regulatory requirements; and (b) a prior, demonstrated commitment to early intervention leading to college access through collaboration and replication of successful strategies.

Competitive Preference Priority 2—Turning Around Persistently Lowest-Achieving Schools (Up to 3 Additional Points)

Projects that are designed to address one or more of the following priority areas:

(a) Improving student achievement (as defined in this notice) in persistently lowest-achieving schools (as defined in this notice).

(b) Increasing graduation rates (as defined in this notice) and college enrollment rates for students in persistently lowest-achieving schools (as defined in this notice).

Note: States proposing to work in persistently lowest- achieving schools under this priority should consider providing a list of qualifying schools along with descriptions of the strategies that the State proposes to implement within these specific schools in order to improve one or more of the following: student achievement (as defined in this notice), graduation rates (as defined in this notice), or college enrollment rates.

Competitive Preference Priority 3—Enabling More Data-Based Decision-Making (Up to 3 Additional Points)

Projects that are designed to collect (or obtain), analyze, and use high-quality and timely data, including data on program participant outcomes, in accordance with privacy requirements (as defined in this notice), in one or more of the following priority areas:

(a) Improving instructional practices, policies, and student outcomes in elementary or secondary schools.

(b) Improving postsecondary student outcomes relating to enrollment, persistence, and completion and leading to career success.

(c) Providing reliable and comprehensive information on the implementation of Department of Education programs, and participant outcomes in these programs, by using data from State longitudinal data systems or by obtaining data from reliable third-party sources.

Note: Applicants proposing to use data to improve decision-making might want to consider demonstrating their ability to access the State's longitudinal data system for reporting postsecondary student outcomes and student outcomes in elementary and secondary schools. Examples of other data-based activities could include using course-taking trend data to structure interventions tailored to keep students 'on-track' to graduate from high school and prepared for postsecondary education or using such data to develop early warning indicator systems designed to prevent students from dropping out.

Competitive Preference Priority 4—Implementing Internationally Benchmarked, College-and Career-Ready Elementary and Secondary Academic Standards (Up to 4 Additional Points)

Projects that are designed to support the implementation of internationally benchmarked, college- and career-ready academic standards held in common by multiple States and to improve

instruction and learning, including projects in one or more of the following priority areas:

(a) The development or implementation of curriculum or instructional materials aligned with those standards.

(b) The development or implementation of professional development or preparation programs aligned with those standards.

(c) Strategies that translate the standards into classroom practice.

Note: We interpret the GEAR UP statute and applicable cost principles contained in U.S. Office of Management and Budget Circular A–87 as not authorizing a State grantee to use GEAR UP program funds to either develop the assessments or implement other activities in this priority unless doing so focuses only on the eligible students in local educational agencies (LEAs) participating in the State's GEAR UP project. However, a State grantee may use Federal funds to help participating LEAs implement any part of the State's or LEA's strategies for meeting this competitive preference priority. Similarly, a State also may use GEAR UP program funds to assist LEAs that have received funding under the Investing in Innovation (i3) program to implement strategies and activities that align with State strategies for preparing eligible GEAR UP students to attend and succeed in postsecondary education. These strategies may include the development of graduation and career plans.

Invitational Priority: For FY 2011 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Invitational Priority—Financial Access and College Savings Accounts

Background

Research indicates that students with savings accounts may be up to seven times more likely to attend college, even when controlling for other factors (Elliot, Jung, and Friedline, 2010: *http://csd.wustl.edu/Publications/Documents/WP10-01.pdf*). Yet 25 percent of U.S. households (and 50 percent of Black and Hispanic households) are unbanked or underbanked, meaning that they either do not have a Federally-insured deposit account, or that they have an account but still rely on costly alternative financial services. Young adults are disproportionately unbanked and underbanked (*http://www.economicinclusion.gov/*). At the same time, a lack of financial literacy—such as overestimating the price of college, not applying for Federal student aid, and taking private education loans before exhausting Federal loans—is a major roadblock on the path to college access and success for too many students and families (*http://www2.ed.gov/legislation/FedRegister/announcements/2010-3/072610c.html*). Partially as a result of these findings, the Secretary of Education and the Chairmen of the Federal Deposit Insurance Corporation and the National Credit Union Administration announced in November 2010 a new interagency agreement to increase partnerships among schools, financial institutions, and other stakeholders to help students gain access to deposit accounts, learn about money, and save for college. The Department's press statement on this partnership can be found at: *http://www.ed.gov/news/press-releases/fdic-and-ncua-chairs-join-education-secretary-announce-partnership-promote-finan* and the Secretary's recently recorded video encouraging participation at: *http://www.youtube.com/watch?v=uxOoXeOkh_w.*

Section 404D(b) of the HEA expressly authorizes GEAR UP program grantees to design projects that promote participating students' secondary school completion and enrollment in postsecondary education by means that include promotion of financial literacy and economic literacy education or counseling. Accordingly, and in keeping with the goals of the new interagency agreement, the Secretary specifically invites applications that address the following invitational priority.

Invitational Priority

The Secretary invites applications that propose, as part of their strategy for ensuring secondary school completion and postsecondary education enrollment of participating students, financial and economic literacy activities that include:

- Creation or enhancement of partnerships with financial institutions and/or other stakeholders that would (1) provide students with safe and affordable deposit accounts at Federally-insured banks or credit unions, or other safe, affordable, and appropriate financial services, and (2) evaluate the success of these partnerships in meeting this objective; and
- Creation of financial or other incentives to increase savings by GEAR UP students and families of participating GEAR UP students.

Definitions: These definitions are from the notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486) and apply to the competitive preference priorities in this notice.

Graduation rate means a four-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1) and may also include an extended-year adjusted cohort graduation rate consistent with 34 CFR 200.19(b)(1)(v) if the State in which the proposed project is implemented has been approved by the Secretary to use such a rate under Title I of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

Persistently lowest-achieving schools means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) any secondary school that is eligible for, but does not receive, Title I funds that: (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the persistently lowest-achieving schools, a State must take into account both: (i) The academic achievement of the ''all students'' group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) the school's lack of progress on those assessments over a number of years in the ''all students'' group.

Privacy requirements means the requirements of the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g, and its implementing regulations in 34 CFR part 99, the Privacy Act, 5 U.S.C. 552a, as well as all applicable Federal, State and local requirements regarding privacy.

Student achievement means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as

appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across schools. (b) For non-tested grades and subjects: alternative measures of student learning and performance, such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across schools.

Program Authority: 20 U.S.C. 1070a–21—1070a–28.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 694. (c) The notice of final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 15, 2010 (75 FR 78486). **Note:** The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $72,552,000. Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2012 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $500,000–$5,000,000.

Estimated Average Size of Awards: $4,836,800.

Maximum Award: We will reject any application for a State grant that proposes a budget exceeding $5,000,000 for a single budget period of 12 months. We also will reject any State grant application that proposes an increase in its budget after the first 12-month budget period. The Assistant Secretary for Postsecondary Education may change the maximum amounts through a notice published in the **Federal Register**.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 84 months.

III. Eligibility Information

1. *Eligible Applicants:* States.

2. a. *Cost Sharing or Matching:* Section 404C(b)(1) of the HEA requires grantees under this program to provide from State, local, institutional, or private funds, not less than 50 percent of the cost of the program (or $1 of non-Federal funds for every $1 of Federal funds awarded), which may be provided in cash or in-kind. The provision also provides that the match may be accrued over the full duration of the grant award period, except that the grantee must make substantial progress toward meeting the matching requirement in each year of the grant award period.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. Under section 404B(e) of the HEA, grant funds awarded under this program must be used to supplement, and not supplant, other Federal, State, and local funds that would otherwise be expended to carry out activities assisted under this program (20 U.S.C. 1070a–22).

3. *Other:* Under Section 404E(b)(1) of the HEA for State grants, a State must use not less than 25 percent and not more than 50 percent of the grant funds for activities targeted at the LEA level as described in section 404D (excluding the reservation of funds for postsecondary scholarships provided for in section 404D(a)(4) and with the remainder of grant funds spent on postsecondary scholarships to eligible GEAR UP students as described in section 404E. However, section 404E(b)(2), of the HEA permits the Secretary to allow a State to use more than 50 percent of grant funds received under this program for activities targeted at the LEA level if the State demonstrates in its grant application that it has another means of providing the students with the financial assistance described in section 404E.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet by downloading the package from the program Web site at: *http://www.ed.gov/programs/gearup/index.html.*

You also can request a copy of the application package from the following: Pariece Wilkins, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., room 7025, Washington, DC 20006–8524. *Telephone:* (202) 219–7104 or by *e-mail: pariece.wilkins@ed.gov.*

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the application narrative (Part II) to no more than 45 pages. However, if you choose to address the invitational priority and/or the competitive preference priorities, you must limit your discussion on the invitational priority to only 4 additional pages and discussion on the competitive preference priorities to only 20 additional pages above the 40-page narrative limitation. For purpose of determining compliance with the page limit, each page on which there are words will be counted as one full page. Applicant must use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, except titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limits do not apply to the cover sheet; the budget section, including the budget narrative and summary form; the assurances and certifications; or the one-page abstract.

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: June 14, 2011.

Deadline for Transmittal of Applications: July 14, 2011.

Applications for grants under this program must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic

submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 12, 2011.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. Data Universal Numbering System Number, Taxpayer Identification Number, and Central Contractor Registry: To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the Central Contractor Registry (CCR), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active CCR registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The CCR registration process may take five or more business days to complete. If you are currently registered with the CCR, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*).

7. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. Electronic Submission of Applications

Applications for grants under the GEAR UP State Grant competition, CFDA number 84.334S must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the GEAR UP State Grant competition at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.326, not 84.326A).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *http://www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) format only. If you upload a file type other than a .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Pariece Wilkins, U.S. Department of Education, 1990 K Street, NW., room 7025, Washington, DC 20006–8524. *FAX:* (202) 219–7074.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.334S), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.334S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 of EDGAR and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the

applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* The objectives of the GEAR UP Program are—(1) To increase the academic performance and preparation for postsecondary education of participating students; (2) to increase the rate of high school graduation and participation in postsecondary education of participating students; and (3) to increase educational expectations for participating students and student and family knowledge of postsecondary education options, preparation, and financing.

The effectiveness of this program depends on the rate at which program participants complete high school and enroll in and complete a postsecondary education. Under the Government Performance and Results Act of 1993 (GPRA), we developed the following performance measures to track progress toward achieving the program's goals:

1. The percentage of GEAR UP students who pass Pre-algebra by the end of 8th grade.
2. The percentage of GEAR UP students who pass Algebra 1 by the end of 9th grade.
3. The percentage of GEAR UP students who take two years of mathematics beyond Algebra 1 by the 12th grade.
4. The percentage of GEAR UP students who graduate from high school.

Note: For each GEAR UP project, the high school graduation rate is defined in the State's approved accountability plan under Part A of Title I of ESEA.

5. The percentage of GEAR UP students and former GEAR UP students who are enrolled in college.
6. The percentage of GEAR UP students who place into college-level Math and English without need for remediation.
7. The percentage of current GEAR UP students and former GEAR UP students enrolled in college who are on track to graduate college.
8. The percentage of students and parents of GEAR UP students who demonstrate knowledge of available financial aid and the costs and benefits of pursuing postsecondary education.

Note: The Department will ask grantees to track and report on Free Application for Federal Student Aid (FAFSA) completion, and will update the survey currently used by grantees to assess knowledge of financial aid and the costs and benefits of pursuing postsecondary education.

9. The percentage of GEAR UP students who have knowledge of, and demonstrate, necessary academic preparation for college.

Note: This measure will be calculated using factors such as the percentage of GEAR UP students on track for graduation at the end of each grade, the percentage of GEAR UP students who complete the PLAN or PSAT by the end of the 10th grade, the percentage of GEAR UP students who complete the SAT or ACT by the end of 11th grade, and the percentage of GEAR UP students who have an unweighted grade point average (GPA) of at least 3.0 on a 4-point scale by the end of the 11th grade.

10. The percentage of parents of GEAR UP students who actively engage in activities associated with assisting students in their academic preparation for college.

In addition, to assess the efficiency of the program, we track the average cost in Federal funds, of achieving a successful outcome, where success is defined as enrollment in postsecondary education of GEAR UP students immediately after high school graduation. These performance measures constitute GEAR UP's indicators of the success of the program. Grant recipients must collect and report data on steps they have taken toward achieving these goals. Accordingly, we request that applicants include these performance measures in conceptualizing the design, implementation, and evaluation of their proposed projects.

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Pariece Wilkins, Gaining Early Awareness and Readiness for Undergraduate Programs, U.S. Department of Education, 1990 K Street, NW., Room 7025, Washington, DC 20006–8524. *Telephone:* (202) 219–7104 or by *e-mail: pariece.wilkins@ed.gov.*

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *http://www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.*

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–14737 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Withdrawal of Notices Inviting Applications for New Awards for Fiscal Year (FY) 2011; Undergraduate International Studies and Foreign Language (UISFL) Program; International Research and Studies (IRS) Program; et al.

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

Overview Information:

CFDA No. 84.016A, 84.017A, 84.019A, 84.022A, 84.153A, 84.274A, and 84.116B.

Withdrawal of Notices inviting applications for new awards for Fiscal Year (FY) 2011; Undergraduate International Studies and Foreign Language (UISFL) Program; International Research and Studies (IRS) Program; Fulbright-Hays Faculty Research Abroad (FRA) Fellowship Program; Fulbright-Hays Doctoral Dissertation Research Abroad (DDRA) Fellowship Program; Business and International Education (BIE)Program; American Overseas Research Centers (AORC) Program; and The Fund for the Improvement of Postsecondary Education (FIPSE)—Comprehensive Program.

SUMMARY: On September 17, 2010 (75 FR 57000) (DDRA); October 1, 2010 (75 FR 60740) (FRA); January 13, 2011 (76 FR 2349) (BIE) and (76 FR 2353) (IRS); January 25, 2011 (76 FR 4330) (AORC); February 8, 2011 (76 FR 6769) (UISFL); and March 22, 2011 (76 FR 15956) (Comprehensive Program), the Department published in the **Federal Register** notices inviting applications for new awards for each of the programs identified. Since that time, the Department has determined that, as a result of final Congressional action on FY 2011 appropriations, there are not sufficient funds available in 2011 to support new awards under these programs. As such, the Department withdraws these notices inviting applications for new awards for FY 2011.

Program Authority: 20 U.S.C. 1124, 20 U.S.C 1125, 22 U.S.C 2452(b)(6), 20 U.S.C. 1130–1130b, 20 U.S.C 1128a, and 20 U.S.C. 1138–1138d.

FOR FURTHER INFORMATION CONTACT: *For information on UISFL, International and Foreign Language Education (IFLE):* Christine Corey, U.S. Department of Education, 1990 K Street, NW., Room 6069, Washington, DC 20006–8521. *Telephone:* (202) 502–7629 or by e-mail: *christine.corey@ed.gov.*

For information on IRS, IFLE: Beth MacRae, U.S. Department of Education, 1990 K Street NW., Room 6088, Washington, DC 20006–8521. *Telephone:* (202) 502–7596 or by *e-mail: beth.macrae@ed.gov.*

For information on FRA, IFLE: Cynthia Dudzinski, U.S. Department of Education, 1990 K Street, NW., Room 6077, Washington, DC 20006–8521. Telephone: (202) 502–7589 or by *e-mail: cynthia.dudzinski@ed.gov.*

For information on DDRA, IFLE: Amy Wilson, U.S. Department of Education, 1990 K Street, NW., Room 6082, Washington, DC 20006–8521. *Telephone:* (202) 502–7700 or by *e-mail: amy.wilson@ed.gov.*

For information on BIE, IFLE: Susanna Easton, U.S. Department of Education, 1990 K Street, NW., Room 6093, Washington, DC 20006–8521. *Telephone:* (202) 502–7628 or by *e-mail: susanna.easton@ed.gov.*

For information on AORC, IFLE: Cheryl Gibbs, U.S. Department of Education, 1990 K Street, NW., Room 6083, Washington, DC 20006–8521. *Telephone:* (202) 502–7634 or by *e-mail: cheryl.gibbs@ed.gov.*

For information on Comprehensive Program, IFLE: Sarah Beaton, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 6054, Washington, DC 20006–8544. *Telephone:* (202) 502–7621 or by e-mail: *sarah.beaton@ed.gov.*

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) by contacting one of the persons listed under the **FOR FURTHER INFORMATION CONTACT** section of this notice. *Telephone:* (202) 245–7363. If you use a telecommunications device for the deaf, call the Federal Relay Service, toll free, at 1–800–877–8339.

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You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *http://www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 9, 2011.

David A. Bergeron,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 2011–14740 Filed 6–13–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meeting Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of Virtual Public Forum for EAC Standards Board.

DATE AND TIME: Monday, July 11, 2011, 9 a.m. EDT through Friday, July 22, 2011, 5 p.m. EDT.

PLACE: EAC Standards Board Virtual Public Forum at *http://www.eac.gov/virtual_public_forum.aspx.* Once at the main page of EAC's Web site, viewers should click the link to the Virtual Public Forum. The virtual public forum will open on Monday, July 11, 2011, at 9 a.m. EDT and will close on Friday, July 22, 2011, at 5 p.m. EDT. The site will be available 24 hours per day during that 12-day period.

PURPOSE: The EAC Standards Board will review and provide feedback on the EAC's Status Resolutions Update, which is an update on actions taken regarding Standards Board resolutions.

The EAC Standards Board Virtual Public Forum was established to enable the Standards Board to provide comment in an efficient manner in a public forum, including being able to review and discuss draft documents when it is not feasible for an in-person board meeting. The Standards Board will not take any votes or propose any resolutions during the 12-day forum of July 11–July 22, 2011.

This activity is open for public observation. the public may view the proceedings of this special forum by visiting the EAC Standards Board Virtual Public Forum at *http://www.eac.gov/virtual_public_forum.aspx* any time between Monday, July 11, 2011, 9 a.m. EDT and Friday, July 22, 2011, 5 p.m. EDT. The public also may view the resolution status update, which will be posted on EAC'S Web site beginning July 11, 2011. The public may file written statements to the EAC Standards Board at *STANDARDSBOARD@EAC.GOV* and by copying Sharmili Edwards at *SEDWARDS@EAC.GOV.* Data on EAC'S Web site is accessible to visitors with disabilities and meets the requirements of Section 508 of the Rehabilitation Act.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, *Telephone:* (202) 566–3100.

Gineen M. Bresso,

Commissioner, U.S. Election Assistance Commission.

[FR Doc. 2011–14847 Filed 6–10–11; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Offshore Renewable Energy; Public Meeting on Information Needs for Resource Assessment and Design Conditions

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting for interested parties to provide DOE information on existing needs for acquiring meteorological and oceanographic information to support cost-effective deployment of offshore renewable energy plants, particularly wind and marine hydrokinetic (MHK) technologies.

DATES: The meeting will be held Thursday, June 23, 2011, from 8:30 a.m. to 5:30 p.m., and Friday, June 24, 2011, 8:30 a.m. to 12 p.m.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Hwy., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Stan Calvert at *stan.calvert@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for DOE to obtain input regarding the development of accurate meteorological and oceanographic information for evaluating the energy potential, economic viability, and engineering requirements of offshore project sites. The meeting is an opportunity for participants to provide, based on their individual experience, individual information and facts regarding this topic. It is not the object of this session to obtain any group position or consensus. Rather, the Department is seeking as many recommendations as possible from all individuals at this meeting.

The public meeting will consist of an initial plenary session in which invited speakers will survey information availability and needs for various applications related to offshore renewable energy. For the remainder of the meeting, breakout groups will be used to provide participants an opportunity to present to DOE information on the specified areas regarding existing gaps in observations and computational products. These groups will be an opportunity to provide comment on information needs for the following applications:

1. Forecasting

Initialize, constrain, and improve appropriate forecast models addressing periods of hours to days ahead for winds, waves, and currents.

2. Energy Projections/Performance Monitoring

Estimate energy to be produced by an offshore renewable energy plant. Once plants are in place, information would also be required to evaluate the plants actual production and determine causes for changes in its performance.

3. Technology Design and Validation

Design and validate energy devices for the marine environment that would predictably withstand physical loads on energy devices in the marine environment while operating at optimum efficiency.

4. Facility Design

Effectively design offshore energy plants as a whole, including designs that would account for interactions among individual devices and for siting issues.

5. Operations Planning/Site Safety

Effectively schedule and execute O&M activities, including safe facility access and response to extreme events.

The meeting is intended to hear from experts involved in planning, deployment, operation, and regulation of offshore wind and marine hydrokinetic energy, experts involved in meteorological and oceanic disciplines relevant to offshore energy, as well as the interested public. However, the meeting will not focus on environmental impact or management issues, which are being addressed by separate efforts. While participation is open to all interested parties, the breakout structure of the meeting will limit its overall size to about 100 participants. When the meeting is fully subscribed, registration will be closed.

To register, please visit *http://www.sentech.org/Offshore_RADC_Meeting/.*

Tentative Agenda (Subject To Change)

Day 1

7:30 a.m.–8:30 a.m.
Registration and continental breakfast
8:30 a.m.–10:15 a.m.
Welcome and plenary session
10:15 a.m.–10:30 a.m.
Break
10:30 a.m.–12:30 p.m.
First breakout sessions
12:30 p.m.–1:30 p.m.
Lunch
1:30 p.m.–3:30 p.m.

Second breakout sessions
3:30 p.m.–4:30 p.m.
Break
4:30 p.m.–5:30 p.m.
Plenary session—breakout reports

Day 2

8 a.m.–8:30 a.m.
Continental breakfast
8:30 a.m.–10:30 a.m.
Third breakout sessions
10:30 a.m. –11 a.m.
Break
11 a.m.–12 p.m.
Closing plenary: breakout reports and closing comments

Registration and Accommodations

A room-block for meeting participants has been established at the Hyatt Regency Crystal City. The room block is limited and is not guaranteed after Friday, June 10.

Issued in Washington, DC, on June 7, 2011.

Mark A. Higgins,

Acting Program Manager, Wind and Hydropower Technologies, Energy Efficiency and Renewable Energy, Department of Energy.

[FR Doc. 2011–14659 Filed 6–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CAC–029]

Energy Conservation Program for Certain Commercial and Industrial Equipment: Decision and Order Granting a Waiver to Daikin AC (Americas) Inc. From the Department of Energy Commercial Package Air Conditioner and Heat Pump Test Procedures

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

ACTION: Decision and Order.

SUMMARY: This notice publishes the U.S. Department of Energy's (DOE) Decision and Order in Case No. CAC–029, which grants Daikin AC (Americas) Inc. (Daikin) a waiver from the existing DOE test procedures applicable to commercial package air-source central air conditioners and heat pumps. The waiver is specific to the Daikin VRV III–PB variable refrigerant flow (VRF) multi-split commercial heat pumps. As a condition of this waiver, Daikin must use the alternate test procedure set forth in this notice to test and rate its VRV III–PB variable refrigerant flow (VRF) multi-split commercial heat pumps.

DATES: This Decision and Order is effective June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Dr. Michael G. Raymond, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. *Telephone:* (202) 586–9611. *E-mail: Michael.Raymond@ee.doe.gov.*

Ms. Elizabeth Kohl, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0103. *Telephone:* (202) 586–7796. *E-mail: Elizabeth.Kohl@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Title 10 of the Code of Federal Regulations (10 CFR) 431.401(f)(4), DOE provides notice of the issuance of the Decision and Order set forth below. In this Decision and Order, DOE grants Daikin a waiver from the existing DOE commercial package air conditioner and heat pump test procedures for its VRV III–PB multi-split products. DOE also requires the use of an alternate test procedure for this equipment. The cooling capacities of Daikin's VRV III–PB multi-split heat pumps in its waiver petition range from 72,000 Btu/h to 360,000 Btu/h. Daikin must use American National Standards Institute/Air-Conditioning, Heating and Refrigeration Institute (ANSI/AHRI) Standard 1230–2010, ''Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment'' to test and rate the specified models of VRV III–PB variable refrigerant flow (VRF) multi-split commercial heat pumps, identified below, with cooling capacities less than or equal to 300,000 Btu/hr. Daikin must use the alternate test procedure specified in its interim waiver to test and rate the specified models of VRV III–PB variable refrigerant flow (VRF) multi-split commercial heat pumps, identified below, with cooling capacities above 300,000, except that for consistency with the testing required by ANSI/AHRI 1230–2010, tests of both ducted and non-ducted indoor units must now be conducted. 76 FR 19069 (April 6, 2011).

Today's decision prohibits Daikin from making any representations concerning the energy efficiency of these products unless the product has been tested consistent with the provisions and restrictions in the alternate test procedure set forth in the Decision and Order below, and the representations fairly disclose the test results. (42 U.S.C. 6314(d)) Distributors, retailers, and private labelers are held to the same standard when making representations regarding the energy efficiency of these products. *Id.*

Issued in Washington, DC, on June 7, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

Decision and Order

In the Matter of: Daikin AC (Americas) Inc. (Daikin) (Case No. CAC–029).

Background

Title III, Part C of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6311–6317, as codified) established the Energy Conservation Program for Certain Industrial Equipment, a program covering certain industrial equipment, which includes the VRV III–PB variable refrigerant flow (VRF) commercial multi-split heat pumps (''VRV III–PB multi-split heat pumps'') that are the focus of this notice.[1] Part C specifically includes definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C 6313), and the authority to require information and reports from manufacturers. 42 U.S.C. 6316. With respect to test procedures, Part C authorizes the Secretary of Energy (the Secretary) to prescribe test procedures that are reasonably designed to produce results that measure energy efficiency, energy use, and estimated annual operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

For commercial package air-conditioning and heating equipment, EPCA provides that ''the test procedures shall be those generally accepted industry testing procedures or rating procedures developed or recognized by the Air-Conditioning and Refrigeration Institute [ARI] or by the American Society of Heating, Refrigerating and Air-Conditioning Engineers [ASHRAE], as referenced in ASHRAE/IES Standard 90.1 and in effect on June 30, 1992.'' (42 U.S.C. 6314(a)(4)(A)) Under 42 U.S.C. 6314(a)(4)(B), the statute further directs the Secretary to amend the test procedure for a covered commercial product if the industry test procedure is amended, unless the Secretary determines, by rule and based on clear and convincing evidence, that such a modified test procedure does not meet the statutory criteria set forth in 42 U.S.C. 6314(a)(2) and (3).

[1] For editorial reasons, upon codification in the U.S. Code, Part C was re-designated Part A–1.

On December 8, 2006, DOE published a final rule adopting test procedures for commercial package air-conditioning and heating equipment, effective January 8, 2007. 71 FR 71340. For commercial air-source heat pumps, DOE adopted ARI Standard 340/360–2004. Table 1 to Title 10 of the Code of Federal Regulations (10 CFR) 431.96 directs manufacturers of commercial package air conditioning and heating equipment to use the appropriate procedure when measuring energy efficiency of those products. The cooling capacities of Daikin's VRV III–PB multi-split heat pumps in its waiver petition range from 72,000 Btu/h to 360,000 Btu/h. The current test procedure for this equipment is ARI Standard 340/360–2004, which includes units with capacities greater than 65,000 Btu/hour.

DOE's regulations for covered products permit a person to seek a waiver from the test procedure requirements for covered commercial equipment if at least one of the following conditions is met: (1) The petitioner's basic model contains one or more design characteristics that prevent testing according to the prescribed test procedures; or (2) the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. 10 CFR 431.401(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 431.401(b)(1)(iii). The Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) may grant a waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 431.401(f)(4). Waivers remain in effect pursuant to the provisions of 10 CFR 431.401(g).

The waiver process also permits parties submitting a petition for waiver to file an application for interim waiver of the applicable test procedure requirements. 10 CFR 431.401(a)(2). The Assistant Secretary will grant an interim waiver request if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 431.401(e)(3). An interim waiver remains in effect for 180 days or until DOE issues its determination on the petition for waiver, whichever occurs first. It may be extended by DOE for an additional 180 days. 10 CFR 431.401(e)(4).

On November 22, 2010, Daikin filed a petition for waiver from the test procedure at 10 CFR 431.96 applicable to commercial package air source central air conditioners and heat pumps, as well as an application for interim waiver. The capacities of Daikin's VRV III–PB multi-split heat pumps range from 72,000 Btu/h to 360,000 Btu/h. The applicable test procedure for commercial air-source heat pumps is ARI 340/360–2004. Manufacturers are directed to use these test procedures pursuant to Table 1 of 10 CFR 431.96.

Daikin seeks a waiver from the applicable test procedures under 10 CFR 431.96 on the grounds that its VRV III–PB multi-split heat pumps contain design characteristics that prevent testing according to the current DOE test procedures. Specifically, Daikin asserts that the two primary factors that prevent testing of its multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi Electric & Electronics USA, Inc. (Mitsubishi) and other manufacturers for similar lines of commercial multi-split air-conditioning systems:

- Testing laboratories cannot test products with so many indoor units; and
- There are too many possible combinations of indoor and outdoor units to test. *See, e.g.,* 72 FR 17528 (April 9, 2007) (Mitsubishi); 76 FR 19069 (April 6, 2011) (Daikin); 76 FR 19078 (April 6, 2011) (Mitsubishi).

On April 6, 2011, DOE published Daikin's petition for waiver in the **Federal Register**, seeking public comment pursuant to 10 CFR 431.401(b)(1)(iv), and granted the application for interim waiver. 76 FR 19069. DOE received no comments on the Daikin petition.

Assertions and Determinations

Daikin's Petition for Waiver

Daikin seeks a waiver from the DOE test procedures for this product class on the grounds that its VRV III–PB variable refrigerant flow (VRF) multi-split commercial heat pumps contain design characteristics that prevent them from being tested using the current DOE test procedures. As stated above, Daikin asserts that the two primary factors that prevent testing of multi-split variable speed products are the same factors stated in the waivers that DOE granted to Mitsubishi, Fujitsu General Ltd. (Fujitsu), Samsung Air Conditioning (Samsung), Sanyo, and LG for similar lines of commercial multi-split air-conditioning systems: (1) Testing laboratories cannot test products with so many indoor units; and (2) there are too many possible combinations of indoor and outdoor unit to test.

The VRV III–PB multi-split heat pump system consists of multiple indoor units connected to an air-cooled outdoor unit. The indoor units for this equipment are available in a very large number of potential configurations, including: 4-Way Cassette, Wall Mounted, Ceiling Suspended, Floor Standing, Ceiling Concealed, and Multi Position AHU. There are over one million combinations possible with the current Daikin VRV III–PB product offerings. It is impractical for testing laboratories to test this equipment because of the number of potential system configurations. Consequently, Daikin requested that DOE grant a waiver from the applicable test procedure for its VRV III–PB multi-split heat pump equipment designs until a suitable test method can be prescribed.

In responses to two petitions for waiver from Mitsubishi, DOE specified an alternate test procedure to provide a basis upon which Mitsubishi could test and make valid energy efficiency representations for its R410A CITY MULTI equipment, as well as for its R22 multi-split equipment. Alternate test procedures related to the Mitsubishi petitions were published in the **Federal Register** on April 9, 2007. *See* 72 FR 17528 and 72 FR 17533. The Daikin VRV III–PB systems have operational characteristics similar to the commercial multi-split products manufactured by Mitsubishi, Samsung, Fujitsu, LG, and Sanyo. DOE has granted waivers for these products with a similar alternate test procedure prescribed for Mitsubishi. For reasons similar to those published in these prior notices, DOE believes that an alternate test procedure is appropriate in this instance.

After DOE granted a waiver for Mitsubishi's R22 multi-split products, ARI formed a committee to discuss testing issues and to develop a testing protocol for variable refrigerant flow systems. The committee has developed a test procedure which has been adopted by the American National Standards Institute (AHRI)–''American National Standards Institute (ANSI)/AHRI 1230–2010: Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment.'' This test procedure has been incorporated into ASHRAE 90.1–2010. DOE is currently assessing AHRI 1230–2010 with respect to the

requirements for test procedures specified by EPCA (42 U.S.C. 6314(a)(4)(B)), and will provide a preliminary determination regarding those test procedures in a future notice of proposed rulemaking.

Daikin's petition proposed that DOE apply ANSI/AHRI Standard 1230–2010 as the alternate test procedure to apply to its VRV III–PB multi-split heat pump equipment as a condition of its requested waiver. As stated above, no comments were received by DOE regarding the Daikin petition. The alternate test procedure in the commercial multi-split waivers that DOE granted to Mitsubishi and the other manufacturers listed above is similar to ANSI/AHRI 1230–2010, except that it covers equipment with cooling capacities greater than 300,000 Btu/hr while ANSI/AHRI 1230–2010 covers equipment with cooling capacities only equal to or less than 300,000 Btu/hr.

DOE issues today's Decision and Order granting Daikin a test procedure waiver for its commercial VRV III–PB multi-split heat pumps. As a condition of this waiver, Daikin must use the alternate test procedure specified by DOE. For the listed Daikin VRV III–PB models with cooling capacities less than or equal to 300,000 Btu/hr, DOE must use ANSI/AHRI 1230–2010 as the alternate procedure. For the listed Daikin VRV III–PB models with cooling capacities greater than 300,000 Btu/h, Daikin must use the alternate test procedure prescribed in its interim waiver, except that for consistency with the testing required by ANSI/AHRI 1230–2010, tests of both ducted and non-ducted indoor units must now be conducted. This alternate test procedure is essentially the same as ANSI/AHRI 1230–2010. The upper limit of the scope of ANSI/AHRI 1230–2010 was set for historical rather than technical reasons.

Alternate Test Procedure

The alternate test procedure prescribed by DOE in earlier multi-split waivers, including the interim waiver granted to Daikin in response to the current petition, consisted of a definition of a ''tested combination'' and a prescription for representations. ANSI/AHRI 1230–2010 also includes a definition of ''tested combination,'' and the two definitions are identical in all relevant respects.

The earlier alternate test procedure provides for efficiency rating of a non-tested combination in one of two ways: (1) At an energy efficiency level determined using a DOE-approved alternative rating method; or (2) at the efficiency level of the tested combination utilizing the same outdoor unit. ANSI/AHRI 1230–2010 requires an additional test and in this respect is similar to the residential test procedure set forth in 10 CFR part 430, subpart B, appendix M. Multi-split manufacturers must test two or more combinations of indoor units with each outdoor unit. The first system combination is tested using only non-ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all non-ducted indoor units is set equal to the rating of the tested system having all non-ducted indoor units. The second system combination is tested using only ducted indoor units that meet the definition of a tested combination. The rating given to any untested multi-split system combination having the same outdoor unit and all ducted indoor units is set equal to the rating of the tested system having all ducted indoor units. The rating given to any untested multi-split system combination having the same outdoor unit and a mix of non-ducted and ducted indoor units is set equal to the average of the ratings for the two required tested combinations.

With regard to the laboratory testing of commercial products, some of the difficulties associated with the existing test procedure are avoided by the alternate test procedure's requirements for choosing the indoor units to be used in the manufacturer-specified tested combination. For example, in addition to limiting the number of indoor units, another requirement is that all the indoor units must be subjected the same minimum external static pressure. This requirement enables the test lab to manifold the outlets from each indoor unit into a common plenum that supplies air to a single airflow measuring apparatus. This eliminates situations in which some of the indoor units are ducted and some are non-ducted. Without this requirement, the laboratory must evaluate the capacity of a subgroup of indoor coils separately and then sum the separate capacities to obtain the overall system capacity. Measuring capacity in this way would require that the test laboratory be equipped with multiple airflow measuring apparatuses. It is unlikely that any test laboratory would be equipped with the necessary number of such apparatuses. Alternatively, the test laboratory could connect its one airflow measuring apparatus to one or more common indoor units until the contribution of each indoor unit had been measured. However, that approach would be so time-consuming as to be impractical.

For the reasons discussed above, DOE believes Daikin's VRV III–PB multi-split heat pumps cannot be tested using the procedure prescribed in 10 CFR 431.96 (ARI Standard 340/360–2004) and incorporated by reference in DOE's regulations at 10 CFR 431.95(b)(2)–(3). After careful consideration, DOE has decided to prescribe ANSI/AHRI 1230–2010 as the alternate test procedure for Daikin's commercial multi-split products with cooling capacities less than or equal to 300,000 Btu/hr and the alternate test procedure specified in Daikin's interim waiver for its commercial multi-split products with cooling capacities greater than 300,000 Btu/hr, except that for consistency with the testing required by ANSI/AHRI 1230–2010, tests of both ducted and non-ducted indoor units must now be conducted.

Consultations With Other Agencies

DOE consulted with the Federal Trade Commission (FTC) staff concerning the Daikin petition for waiver. The FTC staff did not have any objections to issuing a waiver to Daikin.

Conclusion

After careful consideration of all the materials submitted by Daikin, the absence of any comments, and consultation with the FTC staff, it is ordered that:

(1) The petition for waiver filed by Daikin (Case No. CAC–029) is hereby granted as set forth in the paragraphs below.

(2) Daikin shall not be required to test or rate its VRV III–PB multi-split heat pump models listed below on the basis of the test procedures cited in 10 CFR 431.96, specifically ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2–3)). Instead, it shall be required to test and rate such products according to the alternate test procedure as set forth in paragraph (3).

VRV III–PB multi-split heat pump series outdoor units:

- *460V/3-phase/60Hz Models:*
  - *Heat Pump models RXYQ72PBYD, RXYQ96PBYD, RXYQ120PBYD, RXYQ144PBYD, RXYQ168PBYD, RXYQ192PBYD, RXYQ216PBYD, RXYQ240PBYD, RXYQ264PBYD, RXYQ288PBYD, RXYQ312PBYD, RXYQ336PBYD, RXYQ360PBYD with nominal cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, 240,000, 264,000, 288,000, 312,000, 336,000 and 360,000 Btu/hr respectively.*
  - *Heat Recovery models REYQ72PBYD, REYQ96PBYD, REYQ120PBYD, REYQ144PBYD (2x REMQ72PBYD), REYQ168PBYD (1x*

REMQ96PBYD + 1x REMQ72PBYD), REYQ192PBYD (2x REMQ96PBYD), REYQ216PBYD (1x REMQ120PBYD + 1x REMQ96PBYD), REYQ240PBYD (2x REMQ120PBYD), REYQ264PBYD (1x REMQ72PBYD + 2x REMQ96PBYD), REYQ288PBYD (1x REMQ120PBYD + 1x REMQ96PBYD + 1x REMQ72PBYD), REYQ312PBYD (2x REMQ96PBYD + 1x REMQ120PBYD), REYQ336PBYD (2x REMQ120PBYD + 1x REMQ96PBYD), with nominal cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, 240,000, 264,000, 288,000, 312,000 and 336,000 Btu/hr respectively.

- *208–230V/3-phase/60Hz Models:*

○ *Heat Pump models RXYQ72PBTJ, RXYQ96PBTJ, RXYQ120PBTJ, RXYQ144PBTJ, RXYQ168PBTJ, RXYQ192PBTJ, RXYQ216PBTJ, RXYQ240PBTJ, RXYQ264PBTJ, RXYQ288PBTJ, RXYQ312PBTJ, RXYQ336PBTJ, RXYQ360PBTJ with nominal cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, 240,000, 264,000, 288,000, 312,000, 336,000 and 360,000 Btu/hr respectively.*

○ *Heat Recovery models REYQ72PBTJ, REYQ96PBTJ, REYQ120PBTJ, REYQ144PBTJ, REYQ168PBTJ (1x REMQ96PBTJ + 1x REMQ72PBTJ), REYQ192PBTJ (2x REMQ96PBTJ), REYQ216PBTJ (1x REMQ120PBTJ + 1x REMQ96PBTJ), REYQ240PBTJ (2x REMQ120PBTJ), REYQ264PBTJ (1x REMQ72PBTJ + 2x REMQ96PBTJ), REYQ288PBTJ (1x REMQ120PBTJ + 1x REMQ96PBTJ + 1x REMQ72PBTJ), REYQ312PBTJ (2x REMQ96PBTJ + 1x REMQ120PBTJ), REYQ336PBTJ (2x REMQ120PBTJ + 1x REMQ96PBTJ), with nominal cooling capacities of 72,000, 96,000, 120,000, 144,000, 168,000, 192,000, 216,000, 240,000, 264,000, 288,000, 312,000 and 336,000 Btu/hr respectively.*

- *Compatible indoor units for above listed outdoor units:*

○ *FXAQ Series all mounted indoor units with nominal capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 Btu/hr.*

○ *FXLQ Series floor mounted indoor units with nominal capacities of 12,000, 18,000 and 24,000 Btu/hr.*

○ *FXNQ Series concealed floor mounted indoor units with nominal capacities of 12,000, 18,000 and 24,000 Btu/hr.*

○ *FXDQ Series low static ducted indoor units with nominal capacities of 7,500, 9,500, 12,000, 18,000 and 24,000 Btu/hr.*

○ *FXSQ Series medium static ducted indoor units with nominal capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000 Btu/hr.*

○ *FXMQ Series medium/high static ducted indoor units with nominal capacities of 7,500, 9,500, 12,000, 18,000, 24,000, 30,000, 36,000, 48,000, 72,000 and 96,000 Btu/hr.*

○ *FXZQ Series recessed cassette indoor units with nominal capacities of 7,500, 9,500, 12,000 and 18,000 Btu/hr.*

○ *FXFQ Series recessed cassette indoor units with nominal capacities of 9,500, 12,000, 18,000, 24,000, 30,000, 36,000 and 48,000 Btu/hr.*

○ *FXHQ Series ceiling suspended indoor units with nominal capacities of 12,000, 24,000 and 36,000 Btu/hr.*

○ *FXTQ Series ceiling suspended indoor units with nominal capacities of 12,000, 18,000, 24,000, 30,000, 36,000, 42,000, 48,000 and 54,000 Btu/hr.*

○ *FXMQ–MF Series concealed ducted indoor units with nominal capacities of 48,000, 72,000, and 96,000 Btu/hr.*

(3) *Alternate test procedure.*

(A) Daikin is not required to test the products with cooling capacities of 300,000 Btu/h and below listed in paragraph (2) above according to the test procedure for commercial package air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96 (ARI Standard 340/360–2004 (incorporated by reference in 10 CFR 431.95(b)(2)–(3)), but instead shall use the alternate test procedure ANSI/AHRI 1230–2010.

(B) Daikin shall be required to test the equipment listed in paragraph (2) above with cooling capacities above 300,000 Btu/h according to the test procedures for central air conditioners and heat pumps prescribed by DOE at 10 CFR 431.96, except that Daikin shall test each model of outdoor unit with two or more combinations of indoor units. The first system combination shall be tested using only non-ducted indoor units that meet the definition of a tested combination as set forth in paragraph C. The second system combination shall be tested using only ducted indoor units that meet the definition of a tested combination as set forth in paragraph C. Daikin shall make representations concerning the VRV III–PB multi-split heat pump equipment covered in this waiver according to the provisions of subparagraph (D).

(C) Tested combination. The term tested combination means a sample basic model comprised of units that are production units, or are representative of production units, of the basic model being tested. For the purposes of this waiver, the tested combination shall have the following features:

(1) The basic model of a variable refrigerant flow system used as a tested combination shall consist of one outdoor unit, with one or more compressors, that is matched with between two and five indoor units. (For systems with nominal cooling capacities greater than 150,000 Btu/h, as many as eight indoor units may be used, so as to be able to test non-ducted indoor unit combinations). For multi-split systems, each of these indoor units shall be designed for individual operation.

(2) The indoor units shall—

(i) Represent the highest sales model family or another indoor model family if the highest sales model family does not provide sufficient capacity (see ii);

(ii) Together, have a nominal cooling capacity that is between 95% and 105% of the nominal cooling capacity of the outdoor unit;

(iii) Not, individually, have a nominal cooling capacity that is greater than 50% of the nominal cooling capacity of the outdoor unit;

(iv) Operate at fan speeds that are consistent with the manufacturer's specifications; and

(v) Be subject to the same minimum external static pressure requirement while being configurable to produce the same static pressure at the exit of each outlet plenum when manifolded as per section 2.4.1 of 10 CFR Part 430, subpart B, appendix M.

(D) *Representations.* In making representations about the energy efficiency of its VRV III–PB multi-split products, for compliance, marketing, or other purposes, Daikin must fairly disclose the results of testing under the DOE test procedure in a manner consistent with the provisions outlined below:

(i) For VRV III–PB multi-split combinations tested in accordance with this alternate test procedure, Daikin may make representations based on those test results.

(ii) For VRV III–PB multi-split combinations that are not tested, Daikin may make representations based on the testing results for the tested combination and that are consistent with one of the following methods:

(a) Rating of non-tested combinations according to an alternative rating method approved by DOE; or

(b) Rating of non-tested combinations having the same outdoor unit and all non-ducted indoor units shall be set equal to the rating of the tested system having all non-ducted indoor units.

(c) Rating of non-tested combinations having the same outdoor unit and all ducted indoor units shall be set equal to the rating of the tested system having all ducted indoor units. To be considered a ducted unit, the indoor unit must be intended to be connected with ductwork and have a rated external static pressure capability greater than zero (0).

(d) Rating of non-tested combinations having the same outdoor unit and a mix of non-ducted and ducted indoor units shall be set equal to the average of the ratings for the two required tested combinations.

(4) This waiver shall remain in effect from the date this Decision and Order is issued, consistent with the provisions of 10 CFR 431.401(g).

(5) This waiver is issued on the condition that the statements, representations, and documentary materials provided by the petitioner are valid. DOE may revoke or modify the waiver at any time if it determines that the factual basis underlying the petition for waiver is incorrect, or the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

(6) This waiver applies only to those basic models set out in Daikin's petition for waiver. Grant of this waiver does not release a petitioner from the certification requirements set forth at 10 CFR part 429.

Issued in Washington, DC on June 7, 2011.

Kathleen B. Hogan,

Deputy Assistant Secretary, Office of Technology Development, Energy Efficiency and Renewable Energy.

[FR Doc. 2011–14654 Filed 6–13–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–583–000]

Commission Information Collection Activities [FERC–583], Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A) (2006), (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the proposed information collection described below.

DATES: Comments in consideration of the collection of information are due August 12, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–583–000. Documents must be prepared in an acceptable filing format and in compliance with Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.* eFiling instructions are available at: *http://www.ferc.gov/docs-filing/efiling.asp.* First-time users must follow eRegister instructions at: *http://www.ferc.gov/docs-filing/eregistration.asp,* to establish a user name and password before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of eFiled comments. Commenters making an eFiling should not make a paper filing. Commenters that are not able to file electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription at *http://www.ferc.gov/docs-filing/esubscription.asp.* All comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's eLibrary at *http://www.ferc.gov/docs-filing/elibrary.asp,* by searching on Docket No. IC11–583. For user assistance, contact FERC Online Support by e-mail at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free), or (202) 502–8659 for TTY.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by e-mail at *DataClearance@FERC.gov,* telephone at (202) 502–8663, and fax at (202) 273–0873.

SUPPLEMENTARY INFORMATION: The information collected under the requirements of FERC–583 ''Annual Kilowatt Generating Report (Annual Charges)'' (OMB No. 1902–0136) is used by the Commission to implement the statutory provisions of section 10(e) of the Federal Power Act (FPA), part I, 16 U.S.C. 803(e) which requires the Commission to collect annual charges from hydropower licensees for, among other things, the cost of administering part I of the FPA and for the use of United States dams. In addition, section 3401 of the Omnibus Budget Reconciliation Act of 1986 (OBRA) authorizes the Commission to ''assess and collect fees and annual charges in any fiscal year in amounts equal to all of the costs incurred by the Commission in that fiscal year.'' The information is collected annually and used to determine the amounts of the annual charges to be assessed licensees for reimbursable government administrative costs and for the use of government dams. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 11.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as:

Data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1) × (2) × (3)
FERC–583	459	1	2	918

Estimated cost burden to respondents is $62,835. (918 hours/2,080 hours per year times $142,372 per year average per employee = $62,835). The cost per respondent is $137 (rounded).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as

administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Dated: June 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–14633 Filed 6–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–069]

Placer County Water Agency; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2079–069.

c. *Date filed:* February 23, 2011.

d. *Applicant:* Placer County Water Agency.

e. *Name of Project:* Middle Fork American River Project.

f. *Location:* The Middle Fork American River Project is located in Placer and El Dorado counties, almost entirely within the Tahoe and El Dorado National Forests. The existing project occupies 3,268 acres of federal lands administered by the U.S. Department of Agriculture—Forest Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Andy Fecko, Project Manager, Placer County Water Agency, 144 Ferguson Road, Auburn, CA 95603; *Telephone:* (530) 823–4490.

i. *FERC Contact:* Carolyn Templeton, (202) 502–8785 or *carolyn.templeton@ferc.gov.*

j. *Deadline for filing motions to intervene and protests, comments, recommendations, preliminary terms and conditions, and preliminary prescriptions:* 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

Motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/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.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now is ready for environmental analysis.

l. *The Project Description:* The Middle Fork American River Project (project) has two principal water storage reservoirs, French Meadows and Hell Hole. These reservoirs are located on the Middle Fork American River and the Rubicon River, respectively, and have a combined gross storage capacity of 342,583 acre-feet (ac-ft).

Starting at the highest elevation of the project, water is diverted from Duncan Creek at the Duncan Creek diversion and routed through the 1.5-mile-long Duncan Creek-Middle Fork tunnel into French Meadows reservoir (134,993 ac-ft of gross storage).

Flows in the Middle Fork American River are captured and stored in French Meadows reservoir along with diversions from Duncan Creek. From French Meadows reservoir, water is transported via the 2.6-mile-long French Meadows-Hell Hole tunnel, passed through the French Meadows powerhouse [installed generating capacity of 15.3 megawatts (MW)], and released into Hell Hole reservoir (207,590 ac-ft of gross storage). Flows in the Rubicon River are captured and stored in Hell Hole reservoir along with water released from French Meadows reservoir through French Meadows powerhouse. Water released from Hell Hole reservoir into the Rubicon River to meet instream flow requirements first pass through the Hell Hole powerhouse (installed generating capacity of 0.73 MW), which is located at the base of Hell Hole dam.

From Hell Hole reservoir, water is also transported via the 10.4-mile-long Hell Hole-Middle Fork tunnel, passed through the Middle Fork powerhouse (installed generating capacity of 122.4 MW), and released into the Middle Fork Interbay (175 ac-ft of gross storage). Between Hell Hole reservoir and Middle Fork powerhouse, water is diverted from the North and South Forks of Long Canyon creeks directly into the Hell Hole-Middle Fork tunnel. Water diverted from these creeks into the Hell Hole-Middle Fork tunnel can either be stored in Hell Hole reservoir or be used to augment releases from Hell Hole reservoir to the Middle Fork powerhouse.

Flows from the Middle Fork American River (including instream flow releases from French Meadows reservoir) are captured at Middle Fork interbay along with water released from Hell Hole reservoir through Middle Fork powerhouse. From Middle Fork Interbay, water is transported via the 6.7-mile-long Middle Fork-Ralston tunnel, passed through the Ralston powerhouse (installed generating capacity of 79.2 MW), and released into the Ralston afterbay (2,782 ac-ft of gross storage).

Flows from the Middle Fork American River (including instream releases from Middle Fork interbay) and flows from the Rubicon River (including instream releases from Hell Hole

reservoir) are captured in Ralston afterbay along with water transported from Middle Fork interbay through Ralston powerhouse. From Ralston afterbay, water is transported via the 400-foot-long Ralston-Oxbow tunnel, passed through the Oxbow powerhouse (installed generating capacity of 6.1 MW), and released from the project to the Middle Fork American River. The project has a total generation capacity of 224 MW.

The applicant proposes to modify the Duncan Creek, North Fork Long Canyon, and South Fork Long Canyon creeks to provide screening and modified outlets; increase the storage capacity of Hell Hole reservoir by adding 6-feet-tall crest gates; and provide additional flow gaging stations throughout the project.

m. *Location of the Application:* A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''PRELIMINARY TERMS AND CONDITIONS,'' or ''PRELIMINARY FISHWAY PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule: The application will be processed according to the following revised Hydro Licensing Schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of recommendations, preliminary terms and conditions, and preliminary fishway prescriptions.	August 8, 2011.
Commission issues Draft EIS.	February 2, 2012.
Comments on Draft EIS	April 2, 2012.
Modified Terms and Conditions.	June 1, 2012.
Commission Issues Final EIS.	August 30, 2012.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. *A license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provided for in 5.22:* (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Dated: June 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–14634 Filed 6–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–43–000]

Edison Mission Energy v. Midwest Independent Transmission System Operator, Inc.; Notice of Complaint

Take notice that on June 3, 2011, pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (2006) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2011), Edison Mission Energy, on behalf of NorthStar and Pheasant Ridge wind projects (Edison Wind Projects) (collectively Complainants), filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO or Respondent), alleging that Midwest ISO is requiring the Edison Wind Projects to satisfy the M3 milestone in contravention of the Midwest ISO's Tariff and the Commission's Order issued on August 25, 2008 in Docket ER08–1169–000.[1]

Complainant certifies that copies of the complaint were served on the contacts for the Midwest ISO 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

[1] *Midwest Independent Transmission System Operator, Inc.,* 124 FERC ¶ 61,183 (2008).

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 June 17, 2011.

Dated: June 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–14632 Filed 6–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL11–42–000]

Astoria Generating Company, L.P., NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC, TC Ravenswood, LLC; v. New York Independent System Operator, Inc.; Notice of Complaint

Take notice that on June 3, 2011, pursuant to sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824e and 825e (2006) and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206 (2011), Astoria Generating Company, L.P., NRG Power Marketing LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Dunkirk Power LLC, Huntley Power LLC, Oswego Harbor Power LLC and TC Ravenswood, LLC (collectively Complainants), filed a complaint against the New York Independent System Operator, Inc. (NYISO or Respondent), alleging that (1) The NYISO's implementation of buyer-side market power mitigation provisions set forth in Attachment H of the NYISO Market Administration and Control Area Services Tariff (Services Tariff) is in contravention of the requirements of the Services Tariff, and Commission orders and policy; or (2) if such implementation does not violate the Services Tariff, the buyer-side market power mitigation provisions of the Services Tariff are unjust, unreasonable and unduly discriminatory.

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 June 23, 2011.

Dated: June 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–14631 Filed 6–13–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14066–000]

Inside Passage Electric Cooperative

Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 20, 2011, and supplemented on May 18, 2011, the Inside Passage Electric Cooperative 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 Gartina Falls Hydroelectric Project (Gartina Falls Project) to be located on Gartina Creek, near Hoonah, Alaska. The sole purpose of a preliminary permit 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 run-of-river project consist of the following new facilities: (1) A 40-foot-wide, approximately 126-foot-long, 15-foot-high concrete diversion structure with an inflatable gate at the head of Gartina Falls; (2) a 20-foot-wide 40-foot-long concrete intake structure; (3) an 8-foot-wide, 40-foot-long sluiceway on the left abutment of the diversion dam; (4) an approximately 54-inch-diameter, 200-foot-long, steel penstock that would convey water from the diversion dam to the powerhouse; (5) a 15-foot-wide and 10-foot-long, rock-lined tailrace; (6) a powerhouse containing a single 600-kilowatt turbine/generator unit; (7) a small switchyard located adjacent to the powerhouse; (8) an approximately 4-mile-long, 12.5-kilovolt transmission line connecting the project switchyard to an interconnection near Hoonah airport; (9) an approximately 0.3-mile-long access road; and (10) appurtenant facilities. The estimated annual generation output for the project is 1.8 gigawatt-hours.

Applicant Contact: Mr. Peter A. Bibb, Operations Manager, Inside Passage Electric Cooperative, P.O. Box 210149, 12480 Mendenhall Loop Road, Auke Bay, AK 99821, Phone (907) 789–3196.

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–14066–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: June 7, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–14630 Filed 6–13–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9318–7]

California State Motor Vehicle Pollution Control Standards; Within-the-Scope Determination for Amendments to California's Motor Vehicle Greenhouse Gas Regulations; Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Within-the-Scope Determination.

SUMMARY: EPA confirms that amendments promulgated by the California Air Resources Board (''CARB'') are within the scope of an existing waiver of preemption issued by EPA for California's motor vehicle greenhouse gas emissions program. EPA also finds, in the alternative, that California's standards, as amended, meet the requirements for a new waiver of preemption.

DATES: Petitions for review must be filed by August 15, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID EPA–HQ–OAR–2010–0653. All documents relied upon in making this decision, including those submitted to EPA by CARB, and public comments, are contained in the public docket. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air and Radiation Docket in the EPA Headquarters Library, EPA West Building, Room 3334, located at 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open to the public on all Federal government working days from 8:30 a.m. to 4:30 p.m.; generally, it is open Monday through Friday, excluding holidays. The telephone number for the Reading Room is (202) 566–1744. The Air and Radiation Docket and Information Center's Web site is *http://www.epa.gov/oar/docket.html.* The electronic mail (e-mail) address for the Air and Radiation Docket is: *a-and-r-Docket@epa.gov,* the telephone number is (202) 566–1742, and the fax number is (202) 566–9744. An electronic version of the public docket is available through the Federal government's electronic public docket and comment system. You may access EPA dockets at *http://www.regulations.gov.* After opening the *http://www.regulations.gov* Web site, enter EPA HQ–OAR–2010–0653 in the ''Enter Keyword or ID'' fill-in box to view documents in the record of CARB's passenger vehicle GHG amendments within-the-scope waiver request. Although a part of the official docket, the public docket does not include Confidential Business Information (''CBI'') or other information whose disclosure is restricted by statute.

EPA's Office of Transportation and Air Quality (''OTAQ'') maintains a Web page that contains many historical documents regarding California's greenhouse gas waiver request, including those associated with this within-the-scope confirmation request; the page is accessible at *http://www.epa.gov/otaq/climate/ca-waiver.htm.* OTAQ also maintains a Web page that contains general information on its review of California waiver requests. Included on that page are links to prior waiver **Federal Register** notices, some of which are cited in today's notice; the page can be accessed at *http://www.epa.gov/otaq/cafr.htm.*

FOR FURTHER INFORMATION CONTACT: Kristien G. Knapp, Attorney-Advisor, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405J), NW., Washington, DC 20460. *Telephone:* (202) 343–9949. *Fax:* (202) 343–2800. *E-mail: knapp.kristien@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Chronology

On December 21, 2005, the California Air Resources Board (''CARB'') submitted a request to EPA, seeking a waiver of preemption under section 209(b) of the Clean Air Act for California's motor vehicle greenhouse gas (''GHG'') regulations.[1] EPA initially denied that request, and published that denial in a **Federal Register** notice on March 6, 2008.[2] CARB subsequently submitted a request that EPA reconsider that waiver denial on January 21, 2009. EPA took action on that request for reconsideration by reopening its public process.[3] The agency held a public hearing to hear oral testimony and received thousands of written comments from a wide variety of interested persons. EPA's decision on reconsideration—granting California's waiver request—was issued on June 30, 2009, and published in the **Federal Register** on July 8, 2009.[4]

B. CARB's Motor Vehicle Greenhouse Gas Amendments

Since EPA's grant of a waiver of preemption for California's greenhouse gas emission regulations, CARB has promulgated two sets of amendments, which are at issue here. Both sets of amendments are intended to ease manufacturer compliance burdens. CARB's Board adopted the first set of amendments in September 2009. The September 2009 amendments, known as the ''Section 177 State 'Pooling' Amendments,'' include provisions intended to streamline manufacturers' obligations by: (1) Providing manufacturers with the option of pooling vehicle sales across California and in states that have adopted California's greenhouse gas standards starting with model years 2009 through 2011,[5] and (2) revising certification requirements to accept data from the Federal Corporate Average Fuel Economy (''CAFE'') program.[6] CARB's Board adopted the second set of amendments in February 2010. The February 2010 amendments are known as the ''2012–2016 Model Year National Program Amendments''; they provide that compliance with EPA's greenhouse gas standards will be deemed compliance with the California

[1] *See* 72 FR 21260 (Apr. 30, 2007).

[2] 73 FR 12156 (March 6, 2008).

[3] 74 FR 7040 (February 12, 2009).

[4] 74 FR 32744 (July 8, 2009). The Chamber of Commerce of the United States and the National Automobile Dealers Association (''NADA'') sought review of EPA's July 8, 2009 waiver decision in the United States Court of Appeals for the District of Columbia Circuit (No. 09–1237). On April 29, 2011, the Court dismissed the petition for review for lack of jurisdiction.

[5] California Code of Regulations, Title 13 1961.1(a)(1)(A)(i).

[6] California Code of Regulations, Title 13 1961(a)(1)(B).

standards during the 2012 through 2016 model years.[7]

C. EPA's Review of California's Greenhouse Gas Within-the-Scope Request

By letter dated June 28, 2010, CARB submitted a request to EPA seeking confirmation that these two sets of amendments are within the scope of the waiver of preemption issued by EPA under section 209(b) of the Clean Air Act on June 30, 2009. EPA announced its receipt of California's within-the-scope confirmation request in a **Federal Register** notice on January 31, 2011.[8] In that notice, EPA offered an opportunity for public hearing and comment on CARB's request.

Although CARB's request regarding its ''Section 177 State 'Pooling' Amendments'' and its ''2012–2016 Model Year National Program Amendments'' was submitted as a within-the-scope request, EPA invited comment on several issues. Within the context of a within-the-scope analysis, EPA invited comment on whether California's standards: (1) Undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable Federal standards; (2) affect the consistency of California's requirements with section 202(a) of the Act; and (3) raise any other new issues affecting EPA's previous waiver determinations. EPA also requested comment on issues relevant to a full waiver analysis, in the event that EPA determined that California's standards should not be considered within the scope of CARB's previous waivers, and should instead be subjected to a full waiver analysis. Specifically, EPA sought comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (b) whether California needs separate standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act.

No party requested an opportunity for a hearing to present oral testimony, and EPA received only three written comments. One of the comments is not responsive or relevant to the issues EPA sought comment on; a second comment requests that EPA vacate the underlying waiver; and the third comment supports CARB's amendments, and encourages EPA to confirm that the amendments are within the scope of CARB's greenhouse gas waiver. The written comments are from a private citizen,[9] the National Automobile Dealers Association (''NADA''),[10] and the Association of Global Automakers (''Global Automakers''), respectively.[11] The private citizen's comment is not responsive to the issues under EPA's consideration as described in EPA's January 31, 2011 **Federal Register** notice.[12] NADA comments that California's amendments effectively eliminate any need for California's greenhouse gas standards, and therefore EPA should vacate the underlying waiver. NADA did not offer any comment specifically on whether California's amendments meet the within-the-scope criteria, and it did not explicitly offer substantive comments on any of those criteria. NADA did comment on whether California's regulations met the second criterion of a full waiver, concerning whether California needs State standards to meet compelling and extraordinary conditions. NADA also requests that EPA delay taking action on CARB's within-the-scope request until the litigation related to the underlying waiver has been completed. Global Automakers comments that it ''unreservedly supports'' California's amendments, and encourages EPA to confirm that the amendments are within the scope of the previously issued greenhouse gas waiver.[13] As noted below, Global Automakers offered specific comments on all of the issues described for public comment in EPA's January 31, 2011 **Federal Register** notice.

D. Clean Air Act Waivers of Preemption

Section 209(a) of the Clean Air Act preempts states and local governments from setting emission standards for new motor vehicles and engines. It provides:

> No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No state shall require certification, inspection or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

Through operation of section 209(b) of the Act, California is able to seek and receive a waiver of section 209(a)'s preemption. Section 209(b)(1) requires a waiver to be granted for any State that had adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966,[14] if the State determines that its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards (this is known as California's ''protectiveness determination''). However, no waiver is to be granted if EPA finds that: (A) California's above-noted ''protectiveness determination'' is arbitrary and capricious; [15] (B) California does not need such State standards to meet compelling and extraordinary conditions; [16] or (C) California's standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act.[17] Regarding consistency with section 202(a), EPA reviews California's standards for technological feasibility and evaluates testing and enforcement procedures to determine whether they would be inconsistent with Federal test procedures (*e.g.,* if manufacturers would be unable to meet both California and Federal test requirements using the same test vehicle).[18]

If California amends regulations that were previously granted a waiver of preemption, EPA can confirm that the amended regulations are within the scope of the previously granted waiver if three conditions are met. These conditions are discussed below.

E. Burden of Proof

In *Motor and Equip. Mfrs Assoc.* v. *EPA,* 627 F.2d 1095 (DC Cir. 1979) (''*MEMA I*''), the U.S. Court of Appeals stated that the Administrator's role in a section 209 proceeding is to:

> consider all evidence that passes the threshold test of materiality and * * *

[7] California Code of Regulations, Title 13 1961.1(a)(1)(A)(ii). The National Program and EPA's greenhouse gas standards referred to in California's regulation can be found at 75 FR 25323 (May 7, 2010).

[8] 76 FR 5368 (January 31, 2011).

[9] Comments of Joyce Dillard, EPA–HQ–OAR–2010–0653–0004 (March 17, 2011).

[10] Comments of NADA, EPA–HQ–OAR–2010–0653–0005 (March 17, 2011).

[11] Comments of the Association of Global Automakers (''Global Automakers''), EPA–HQ–OAR–2010–0653–0003 (March 17, 2011).

[12] This comment generally appears to express concern for public health and welfare. Because this comment is not responsive to the issues before EPA or to EPA's request for comments, EPA is not responding to this comment.

[13] Comments of Global Automakers, EPA–HQ–OAR–2011–0653–003.

[14] Because California was the only state to have adopted standards prior to 1966, it is the only state that is qualified to seek and receive a waiver. *See* S.Rep. No. 90–403 at 632 (1967).

[15] CAA section 209(b)(1)(A).

[16] CAA section 209(b)(1)(B).

[17] CAA section 209(b)(1)(C).

[18] *See, e.g.,* 74 FR at 32767 (July 8, 2009); *see also* MEMA I, 627 F.2d at 1126.

thereafter assess such material evidence against a standard of proof to determine whether the parties favoring a denial of the waiver have shown that the factual circumstances exist in which Congress intended a denial of the waiver.[19]

The court in *MEMA I* considered the standards of proof under section 209 for the two findings related to granting a waiver for an ''accompanying enforcement procedure'' (as opposed to the standards themselves): (1) Protectiveness in the aggregate and (2) consistency with section 202(a) findings. The court instructed that ''the standard of proof must take account of the nature of the risk of error involved in any given decision, and it therefore varies with the finding involved. We need not decide how this standard operates in every waiver decision.'' [20]

The court upheld the Administrator's position that, to deny a waiver, there must be ''clear and compelling evidence'' to show that proposed procedures undermine the protectiveness of California's standards.[21] The court noted that this standard of proof also accords with the congressional intent to provide California with the broadest possible discretion in setting regulations it finds protective of the public health and welfare.[22]

With respect to the consistency finding, the court did not articulate a standard of proof applicable to all proceedings, but found that the opponents of the waiver were unable to meet their burden of proof even if the standard were a mere preponderance of the evidence. Although *MEMA I* did not explicitly consider the standards of proof under section 209 concerning a waiver request for ''standards,'' as compared to accompanying enforcement procedures, there is nothing in the opinion to suggest that the court's analysis would not apply with equal force to such determinations. EPA's past waiver decisions have consistently made clear that: ''[E]ven in the two areas concededly reserved for Federal judgment by this legislation—the existence of 'compelling and extraordinary' conditions and whether the standards are technologically feasible—Congress intended that the standards of EPA review of the State decision to be a narrow one.'' [23]

Opponents of the waiver bear the burden of showing that the criteria for a denial of California's waiver request have been met. As found in *MEMA I,* this obligation rests firmly with opponents of the waiver in a section 209 proceeding:

[t]he language of the statute and it's legislative history indicate that California's regulations, and California's determinations that they must comply with the statute, when presented to the Administrator are presumed to satisfy the waiver requirements and that the burden of proving otherwise is on whoever attacks them. California must present its regulations and findings at the hearing and thereafter the parties opposing the waiver request bear the burden of persuading the Administrator that the waiver request should be denied.[24]

The Administrator's burden, on the other hand, is to make a reasonable evaluation of the information in the record in coming to the waiver decision. As the court in *MEMA I* stated: ''here, too, if the Administrator ignores evidence demonstrating that the waiver should not be granted, or if he seeks to overcome that evidence with unsupported assumptions of his own, he runs the risk of having his waiver decision set aside as 'arbitrary and capricious.' '' [25] Therefore, the Administrator's burden is to act ''reasonably.'' [26]

II. Discussion

A. Within-the-Scope Analysis

EPA sought comment on a range of issues, including those applicable to a within-the-scope analysis as well as those applicable to a full waiver analysis. Even though EPA sought comment on whether California's amendments should be subjected to a full waiver analysis, no party expressed the opinion that California's amendments require such an analysis. Global Automakers, the only commenter to address this threshold issue of which criteria to apply, stated the amendments at issue qualify for a within-the-scope determination. Global Automakers points out that California's greenhouse gas amendments do not increase the stringency of any emission standard, or add any new pollutant or other emission standard to California's existing greenhouse gas regulations. Therefore, we have evaluated CARB's request by application of our traditional within-the-scope analysis.

EPA can confirm that amended regulations are within the scope of a previously granted waiver of preemption if three conditions are met. First, the amended regulations must not undermine California's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards. Second, the amended regulations must not undermine our previous determination with respect to consistency with section 202(a) of the Act. Third, the amended regulations must not raise any new issues affecting EPA's prior waiver determinations. CARB, in its Resolution 09–53 (September 25, 2009),[27] and Resolution 10–15 (February 25, 2010),[28] expressly stated that its greenhouse gas amendments meet each of these criteria.

1. California's Protectiveness Determination

When granting a waiver of preemption for California's greenhouse gas emission standards, EPA found that opponents of the waiver had not met their burden to demonstrate that California's protectiveness determination was arbitrary and capricious. The protectiveness determination at issue in EPA's previous greenhouse gas waiver proceeding was primarily based upon a comparison of California's greenhouse gas emission standards to then non-existent Federal greenhouse gas emission standards.[29] In the July 30, 2009 decision, EPA noted that ''[i]f federal greenhouse gas standards are promulgated in the future, and if such standards bring this determination into question, then EPA can revisit this decision at that time.'' We also noted that ''EPA would then determine whether these changes are within-the-scope of its prior waiver or if a new, full waiver determination would need to be made, as would be required if California decided to increase the stringency of its greenhouse gas standards.'' [30]

California's greenhouse gas amendments, as described above, do not increase the numerical stringency of its greenhouse gas emission standards or change the California fleet average greenhouse gas emission limits. In addition, although EPA has

[19] *MEMA I,* 627 F.2d at 1122.

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *See, e.g.,* 40 FR 21102–103 (May 28, 1975).

[24] *MEMA I,* 627 F.2d at 1121.

[25] *Id.* at 1126.

[26] *Id.* at 1126.

[27] CARB Resolution 09–53, EPA–HQ–OAR–2010–0653–0002.7 (September 24, 2009).

[28] CARB Resolution 10–15, EPA–HQ–OAR–2010–0653–0002.17 (February 25, 2010).

[29] *See* 74 FR 332744, 32749–32759. EPA also examined then existing CAFE standards promulgated by the NHTSA. EPA found that such standards are not ''applicable federal standards,'' and even if they were considered as such, opponents of the waiver had not demonstrated that CARB's protectiveness determination was arbitrary and capricious. EPA also examined whether CARB's protectiveness determination was arbitrary and capricious based on the real world in-use effects of the GHG standards, and found that opponents of the waiver had not met their burden of proof.

[30] 74 FR 32752–32753 (July 8, 2009).

subsequently promulgated its own emission limits for greenhouse gases, those limits do not begin until the 2012 model year, in contrast to CARB's standards, which began in the 2009 model year. As such, if EPA were to undertake a comparison of California-to-Federal greenhouse gas emission standards, that analysis would compare three years of existing California standards against three years of non-existent Federal standards. Thus, EPA agrees with CARB that California's greenhouse gas amendments do not undermine California's previous protectiveness determination with regard to the 2009 through 2011 model years.

In its June 28, 2010 Letter requesting a within-the scope determination, CARB points out that it made an additional finding that its standards are in the aggregate at least as protective of public health and welfare as comparable Federal greenhouse gas emission standards, and that California's amendments do not undermine the emission reductions from the previously waived California standards.

The comment from Global Automakers states that California's amendments do not cause California's greenhouse gas standards to be less protective than the Federal standards. Global Automakers asserts that the ''deem to comply'' prong of California's amendments render emission benefits to be equally protective as between the California and Federal programs.

In its comments, NADA notes that CARB stated that the national program ''will achieve equal or better GHG emission reduction benefits from MY 2012–16 light-duty vehicles compared to those sold in California and states that have adopted California's Pavley standards as provided in Section 177 of the Clean Air Act.'' NADA believes that CARB's statement leads to the conclusion that ''vacating the waiver * * * likewise will result in no adverse environmental effects * * *.'' However, such a conclusion does not logically follow from the statement CARB made. CARB's statement was in reference to the fact that the national program affects vehicles in all 50 states, whereas the pre-existing California program only affected vehicles in California and section 177 states; it was not a statement with regard to the emission reduction benefits of the California standards themselves in California and the section 177 states. In reviewing the California standards themselves, CARB found that the national program greenhouse gas standards from 2012 to 2015 were slightly less stringent than comparable California standards, and were equivalent to California standards in 2016. CARB also found that emission reductions in California and the section 177 states might be reduced slightly if manufacturers meet California regulations by demonstrating compliance with Federal standards, rather than meeting the pre-existing California standards.[31] NADA does not take issue with this finding. Thus, at the very least, compliance with California's greenhouse gas standards under the revised regulations will result in the same, if not more, emission reductions than would occur in the absence of the California standards. NADA provides no evidence that CARB's standards are less protective than the applicable Federal standards. As such, NADA fails to present any evidence or make any showing that the amendments undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards.

After evaluating the materials submitted by CARB, as well as the public comments from Global Automakers and NADA on this issue, EPA confirms that California's greenhouse gas amendments do not undermine California's previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards.

2. Consistency With Section 202(a) of the Clean Air Act

EPA has stated in the past that California standards and accompanying test procedures would be inconsistent with section 202(a) of the Clean Air Act if: (1) There is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to cost of compliance within the lead time provided, or (2) the Federal and California test procedures impose inconsistent certification requirements.[32] CARB states that the amendments do not undermine our previous determination with respect to consistency with section 202(a) because California's standards have remained the same and the amendments were intended to provide flexibility and reduce the costs of compliance with the regulations.[33] EPA received one public comment on this issue, from Global Automakers. Global Automakers believes that California's amendments ''do not cause California's requirements to be inconsistent with Section 202(a) of the Act.''[34] Global Automakers further states that harmonizing the California program with EPA's Federal program renders California's regulations to be ''more consistent'' with the Clean Air Act.

The first prong of EPA's inquiry into consistency with section 202(a) of the Act depends upon technological feasibility. This requires EPA to evaluate whether adequate technology already exists; or if it does not, whether there is adequate time to develop and apply the technology before the standards go into effect. Here, CARB has not changed its overall California fleet average greenhouse gas emission standards. The amendments at issue have been adopted to provide additional means and flexibilities for manufacturers to comply with the standards. These amendments do not require the development or application of any additional technology beyond that already required by California's original greenhouse gas emission standards. EPA received no comments indicating that CARB's amendments present lead-time or technology issues with respect to consistency under section 202(a) and knows of no other evidence to that effect. Consequently, CARB's amendments do not affect our prior determination regarding consistency with section 202(a), based on lead-time or technological feasibility issues.

The second prong of EPA's inquiry into consistency with section 202(a) of the Act depends on the compatibility of the Federal and California test procedures. CARB's greenhouse gas amendments are designed to deem manufacturer compliance with EPA's greenhouse gas emission standards as compliant with California's requirements. CARB further points out that its amendments are intended to provide flexibility and reduce compliance costs. Therefore, CARB asserts that its amended regulations strengthen CARB's previous analysis that its regulations are consistent with section 202(a) of the Clean Air Act. EPA agrees with this analysis, and EPA received no comments that dispute this analysis. Because CARB's regulations provide additional flexibilities, which

[31] California Air Resources Board, Staff Report: Initial Statement of Reasons for Rulemaking (January 7, 2010), at page 7, EPA–HQ–OAR–2010–0653–0002.6.

[32] *See, e.g.,* 75 FR 8056 (February 23, 2010) and 70 FR 22034 (April 28, 2005).

[33] CARB, Request that Amendments to California's New Passenger Motor Vehicle Greenhouse Gas Regulations Be Found Within the Scope of the Existing Waiver of Clean Air Act Preemption, EPA–HQ–OAR–2010–0653–0002, (June 28, 2010), at page 4.

[34] Comments of Global Automakers, EPA–HQ–OAR–2010–0653–0003, page 5.

reduce compliance costs and even make CARB compliance more flexible to the extent that Federal compliance is deemed to comply with California's requirements, CARB has made their compliance program, including its test procedures, more compatible with the Federal compliance program. Consequently, nothing in the amendments undermines our prior determination concerning consistency of California's test procedures with our own.

For the reasons set forth above, EPA confirms that California's greenhouse gas amendments do not undermine our prior determination concerning consistency with section 202(a) of the Clean Air Act.

3. New Issues

EPA has stated in the past that if California promulgates amendments that raise new issues affecting previously granted waivers, we would not confirm that those amendments are within the scope of previous waivers.[35] CARB states that it is not aware of any new issues presented by its greenhouse gas amendments.[36] Similarly, Global Manufacturers state that the amendments do not raise any new issues affecting the Administrator's previous waiver: ''[T]he amendments merely provide manufacturers the increased compliance flexibility of pooling their California and Section 177 State fleets, and using compliance with the Federal program to show compliance with the California program.'' [37]

The comments from NADA do not specifically state that the amendments create new issues, but the comments appear to suggest NADA's belief that they do. NADA states that the provision that allows compliance with Federal greenhouse gas regulations as an alternative compliance option for compliance with California's greenhouse gas regulations renders California's greenhouse gas standards redundant and because of this ''CARB cannot claim that its rules any longer are needed to meet compelling and extraordinary circumstances.'' This quote is a reference to the requirement in Clean Air Act section 209(b)(1)(B) that EPA shall not grant a waiver to California if it finds that California ''does not need such State standards to meet compelling and extraordinary conditions.''

EPA does not believe that California's amendment allowing compliance with federal greenhouse gas regulations as an option for compliance with California's greenhouse gas regulations raises any new issues regarding our prior determination concerning CAA section 209(b)(1)(B).

In the underlying waiver decision, EPA found that ''the better approach for analyzing the need for 'such State standards' to meet 'compelling and extraordinary conditions' is to review California's need for its program, as a whole, for the class or category of vehicles being regulated, as opposed to its need for individual standards.'' [38] EPA also reiterated its traditional understanding that ''the term compelling and extraordinary conditions 'do not refer to the levels of pollution directly.' Instead, the term refers primarily to the factors that tend to produce higher levels of pollution—'geographical and climatic conditions (like thermal inversions) that, when combined with large numbers and high concentrations of automobiles, create serious air pollution problems.' '' [39] EPA further found that CARB has repeatedly demonstrated the need for its motor vehicle program to address compelling and extraordinary conditions in California.'' [40] In its initial greenhouse gas Waiver Request letter, CARB stated:

> California—the South Coast and San Joaquin Air basins in particular—continues to experience some of the worst air quality in the nation. California's ongoing need for dramatic emission reductions generally and from passenger vehicles specifically is abundantly clear from its recent adoption of state implementation plans for the South Coast and other California air basins.[41] The unique geographical and climatic conditions, and the tremendous growth in the vehicle population and use which moved Congress to authorize California to establish separate vehicle standards in 1967, still exist today.[42]

NADA's comments do not indicate that, as a result of the amendments, California no longer needs a separate motor vehicle emissions program to address compelling and extraordinary conditions in California, or provide any indication that EPA's prior determination on this issue is undermined in any way. Therefore, its comments do not show that California's amendments raise any new issues relevant to EPA's initial waiver decision.

Moreover, although NADA's comments reference the words of the section 209(b)(1)(B), ''need * * * to meet compelling and extraordinary circumstances'' criterion, they do not appear to be directed towards the geographical or climatological conditions that are being referred to by the words ''compelling and extraordinary circumstances.'' Instead, NADA's comments appear to be directed at the stringency of the greenhouse gas standards. The stringency of California's standards is at issue in section 209(b)(1)(A), where Congress addressed the comparison of California standards to federal standards, but it is not an issue under section 209(b)(1)(B). As noted in EPA's underlying waiver decision, section 209(b)(1)(A) calls for a review of California standards ''in the aggregate,'' and EPA can only deny a waiver if it finds that California was arbitrary and capricious in its finding that ''its standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.'' EPA notes that the language of section 209(b)(1)(A) clearly indicates Congress's determination that EPA review the effect of stringency on the protectiveness of California's standards ''in the aggregate,'' and that EPA cannot deny a waiver on the grounds of protectiveness if California standards are at least equally protective as Federal standards. ''Redundancy'' is not the criterion; it is whether California's standards are, in the aggregate, at least as protective as applicable Federal standards. Furthermore, NADA does not address California's standards ''in the aggregate'' and, as noted above, does not provide any evidence to suggest, even with regard to California's greenhouse gas standards, that California was arbitrary and capricious in its finding that its standards are at least as protective as comparable federal standards. The stringency issue raised by NADA is not relevant under section 209(b)(1)(B), and it would be inconsistent with the intent of Congress to deny a waiver or a within-the-scope determination based on section 209(b)(1)(B) for reasons Congress clearly addressed and clearly determined should not be the basis for a denial under section 209(b)(1)(A). NADA's comments, therefore, do not raise any

[35] *See, e.g.,* 75 FR 8056 (February 23, 2010), and 70 FR 22034 (April 28, 2005).

[36] CARB, Request that Amendments to California's New Passenger Motor Vehicle Greenhouse Gas Regulations Be Found Within the Scope of the Existing Waiver of Clean Air Act Preemption, EPA–HQ–OAR–2010–0653–0002, (June 28, 2010), at page 5.

[37] Comments of Global Automakers, EPA–HQ–OAR–2010–0653–0003, page 5.

[38] 74 FR at 32762.

[39] 74 FR at 32759.

[40] 74 FR at 32762–32763.

[41] *See, e.g.,* Approval and Promulgation of State Implementation Plans; California—South Coast, 64 FR 1770, 1771 (January 12, 1999). *See also* 69 FR 23858, 23881–90 (April 30, 2004) (designating 15 areas in California as nonattainment for the federal 8-hour ozone national ambient air quality standard).

[42] California Air Resources Board, EPA–HQ–OAR–2006–0173–0004.1, at page 16.

new issues regarding our preexisting waiver for California greenhouse gas emission standards.

For these reasons, EPA confirms that California's greenhouse gas amendments raise no new issues with respect to previously granted waivers of preemption.

4. Within-the-Scope Confirmation

For all the reasons set forth above, EPA can confirm that California's amendments to its motor vehicle greenhouse gas emissions program are within the scope of existing waivers of preemption.

B. Full Waiver of Preemption Analysis

In our January 31, 2011 **Federal Register** notice, EPA requested comment on the within-the-scope criteria, and on issues relevant to a full waiver analysis, in the event that EPA determined that California's standards should not be considered within the scope of CARB's previous waivers, and should instead be subjected to a full waiver analysis. Specifically, EPA sought comment on: (a) Whether CARB's determination that its standards, in the aggregate, are at least as protective of public health and welfare as applicable Federal standards is arbitrary and capricious; (b) whether California needs separate standards to meet compelling and extraordinary conditions; and (c) whether California's standards and accompanying enforcement procedures are consistent with section 202(a) of the Act. As discussed above, EPA confirms that California's amendments meet the within-the-scope criteria. Additionally, because we received comment that appears to dispute this within-the-scope determination, we have applied our traditional full waiver analysis to California's amendments in the alternative to that determination. We have determined that those in opposition to granting a waiver have not met their burden of showing that California's regulations, as amended, do not meet the criteria for a new waiver of preemption.

1. California's Protectiveness Determination

Section 209(b)(1)(A) of the Act requires EPA to deny a waiver if the Administrator finds that California was arbitrary and capricious in its determination that its State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. When evaluating California's protectiveness determination, EPA compares the stringency of the California and Federal standards at issue in a given waiver request. That comparison is undertaken within the broader context of the previously waived California program, which relies upon protectiveness determinations that EPA previously found were not arbitrary and capricious.

In our existing waiver for California's greenhouse gas standards, we reviewed California's protectiveness determination:

> California made a protectiveness determination with regard to its greenhouse gas regulations in Resolution 04–28, adopted by the California Air Resources Board on September 23, 2004. Included in that Resolution were several bases to support California's protectiveness determination. Most generally, CARB made a broad finding that observed and projected changes in California's climate are likely to have a significant adverse impact on public health and welfare in California, and that California is attempting to address those impacts by regulating in a field for which there are no comparable federal regulations. CARB also found that its greenhouse gas standards will increase the health and welfare benefits from its broader motor vehicle emissions program by directly reducing upstream emissions of criteria pollutants from decreased fuel consumption. Beyond that analysis of the new regulations' impact on its broader program, CARB projected consumer response to the greenhouse gas regulations. With respect to consumer shifts due to a potential ''scrappage effect'' (the impact of increased vehicle price on fleet age) and ''rebound effect'' (the impact of lower operating costs on vehicle miles travelled), CARB found minor impacts—but net reductions—on criteria pollutant emissions. Further, even assuming larger shifts in consumer demand attributable to the greenhouse gas emission standards, CARB found that the result remains a net reduction in both greenhouse gas emissions and criteria pollutant emissions. That is, CARB found that the addition of its greenhouse gas emission standards to its larger motor vehicle emissions program (LEV II), which generally aligns with the federal motor vehicle emissions program (Tier II), renders the whole program to be more protective of public health and welfare. CARB noted that EPA has already determined that California was not arbitrary and capricious in its determination that the pre-existing California standards for light-duty vehicles and trucks, known as LEV II, is at least as protective as comparable Federal standards, the Tier II standards. Implicit in California's greenhouse gas protectiveness determination, then, is that the inclusion of greenhouse gas standards into California's existing motor vehicle emissions program will not cause California's program to be less protective than the federal program.[43] (citations omitted)

After reviewing California's protectiveness determination and the evidence presented by opponents of the waiver, EPA was unable to find that California was arbitrary and capricious in its making its protectiveness determination. Against this backdrop, California made new protectiveness determinations when amending its motor vehicle greenhouse gas emissions program.

In both of the CARB rulemakings for the amendments at issue here, the CARB Board found that the amendments did not undermine the Board's previous determination that the regulation's emission standards, other emission related requirements, and associated enforcement procedures are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.[44] The CARB Board found that no basis existed for it to find that its previous protectiveness determination would be undermined by the amendments. With respect to the 2009–2011 model years, the fleet average greenhouse gas emission limits remain unchanged from the previously waived standards; moreover, they remain the only greenhouse gas emission limits in existence for those model years. Because of those factors, California maintains that those standards are ''undisputedly more protective.'' [45] With respect to the 2012–2016 model years, in addition to making a new protectiveness determination, CARB's Executive Officer made an additional protectiveness determination after reviewing EPA's final rule promulgating Federal greenhouse gas emission standards.[46]

No commenter expressed an opinion or presented any evidence suggesting that CARB was arbitrary and capricious in making its three above-noted protectiveness findings. Therefore, based on the record before me, I cannot find that California was arbitrary and capricious in its findings that California's motor vehicle greenhouse gas emission standards, as amended, are, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

2. California's Need for State Standards To Meet Compelling and Extraordinary Conditions

Under section 209(b)(1)(B) of the Act, I cannot grant a waiver if I find that California ''does not need such State standards to meet compelling and extraordinary conditions.'' EPA has traditionally interpreted this provision

[43] 74 FR 32749–32750 (July 8, 2009).

[44] California Air Resources Board, Resolution 09–53 (September 25, 2009) and Resolution 10–15 (February 25, 2010).

[45] CARB Request Letter at page 4.

[46] CARB Executive Order G–10–051 (June 28, 2010).

as considering whether California needs a separate motor vehicle emissions program to meet compelling and extraordinary conditions. In EPA's greenhouse gas waiver decision issued on June 30, 2009, EPA followed its traditional interpretation and was unable to identify any change in circumstances or any evidence to suggest that the conditions that California identified as giving rise to serious air quality problems in California no longer exist. Therefore, EPA was unable to deny the waiver request under section 209(b)(1)(B).

EPA also reviewed California's greenhouse gas standards on the two alternative grounds relied upon in the March 2006 decision to deny a waiver. EPA reviewed California's greenhouse gas standards separately from its program and found that it could not find that opponents of the waiver had demonstrated that California did not need its greenhouse gas emission standards to meet compelling and extraordinary conditions, or that opponents of the waiver had demonstrated that the impacts of climate change in California are not compelling and extraordinary. While recognizing that EPA was not adopting these alternative interpretations of section 209(b)(1)(B), EPA determined that it would be unable to deny the waiver request under section 209(b)(1)(B) under these alternative grounds.

As discussed above in section II.A.3, CARB has repeatedly demonstrated the need for its motor vehicle emissions program to address compelling and extraordinary conditions in California. Furthermore, no commenter has presented any argument or evidence to suggest that California no longer needs a separate motor vehicle emissions program to address compelling and extraordinary conditions in California, or that EPA's prior determination on this issue is undermined in any way. Therefore, I determine that I cannot deny California a waiver for its motor vehicle greenhouse gas emission standards, as amended, under section 209(b)(1)(B). Furthermore, no commenter has presented any argument or evidence to suggest that EPA's prior determinations regarding the alternative interpretations discussed in the June 30, 2009 waiver decision are undermined in any way.

3. Consistency With Section 202(a) of the Clean Air Act

Under section 209(b)(1)(C) of the Act, EPA must deny a California waiver request if the Agency finds that California standards and accompanying enforcement procedures are not consistent with section 202(a) of the Act. The scope of EPA's review under this criterion is narrow. EPA has stated on many occasions that the determination is limited to whether those opposed to the waiver have met their burden of establishing that California's standards are technologically infeasible, or that California's test procedures impose requirements inconsistent with Federal test procedures. Previous waivers of Federal preemption have stated that California's standards are not consistent with section 202(a) if there is inadequate lead time to permit the development of technology necessary to meet those requirements, giving appropriate consideration to the cost of compliance within that time. California's accompanying enforcement procedures would be inconsistent with section 202(a) if the Federal and California test procedures conflict, *i.e.,* if manufacturers would be unable to meet both the California and Federal test requirements with the same test vehicle.

In the June 30, 2009 waiver decision, EPA found that industry opponents had not met their burden of producing the evidence necessary for EPA to find that California's greenhouse gas standards are not consistent with section 202(a) of the Act. EPA determined that CARB demonstrated a reasonable projection that compliance with California's greenhouse gas standards was reasonable based on availability of technologies in the lead-time provided and consideration of cost of compliance. Therefore, EPA was unable to find that California's greenhouse gas emission standards were not technologically feasible within the available lead-time, giving appropriate consideration to the cost of compliance.

In its within-the-scope request, CARB states that its greenhouse gas amendments ''do not undermine [its] previous discussions [regarding consistency with section 202(a)] both because the California standards have remained the same (*i.e.,* covering the same vehicles for the same model-years at the same stringency) and because the amendments were intended to provide flexibility and reduce the costs of manufacturers' compliance, thereby increasing the feasibility of meeting the standards.'' [47] CARB also asserts that its amendments may reduce compliance costs. EPA received one public comment on this issue, from Global Automakers. Global Automakers believes that California's amendments ''do not cause California's requirements to be inconsistent with Section 202(a) of the Act.'' [48] Global Automakers further states that harmonizing the California program with EPA's Federal program renders California's regulations to be ''more consistent'' with the Clean Air Act. No commenter expressed any disagreement with these statements from CARB, and no commenter presented any evidence opposing CARB's assertions regarding technological feasibility, lead-time, and cost of compliance. Therefore, EPA is unable to find that California's greenhouse gas emission standards, as amended, are not technologically feasible within the available lead-time, giving appropriate consideration to the cost of compliance.

4. Full Waiver of Preemption Determination

After a review of the information submitted by CARB and other parties to this proceeding, I find that those opposing California's request have not met the burden of demonstrating that a waiver of California's amended greenhouse gas regulations should be denied based on any of the three statutory criteria of section 209(b)(1). For this reason, I find that, in the alternative, even if California's revisions to its greenhouse gas standards were not within-the-scope of the earlier waiver, California's amended motor vehicle greenhouse gas emission regulations would receive a full waiver.

C. Other Issues

NADA requests that EPA not take action on this within-the-scope request until after the Court of Appeals for the District of Columbia Circuit has acted on NADA's petition for review of the underlying waiver related to California's greenhouse gas emission standards. On April 29, 2011, the Court of Appeals acted on NADA's petition for review, dismissing it for want of jurisdiction. The request by NADA is therefore moot.

III. Decision

The Administrator has delegated the authority to grant California a section 209(b) waiver of preemption to the Assistant Administrator for Air and Radiation. This includes the authority to determine whether amendments to its regulations are within the scope of a prior wavier. CARB's June 28, 2010 letter seeks confirmation from EPA that CARB's amendments to its new passenger motor vehicle greenhouse gas regulations are within the scope of its

[47] CARB Request at page 4.

[48] Comments of Global Automakers, EPA–HQ–OAR–2010–0653–0003, page 5.

existing waiver of preemption. After evaluating CARB's amendments, CARB's submissions, and the public comments, EPA confirms that California's regulatory amendments meet the three criteria that EPA uses to determine whether amendments by California are within the scope of previous waivers. First, EPA agrees with CARB that the greenhouse gas amendments do not undermine California's protectiveness determination from its previously waived greenhouse gas request. Second, EPA agrees with CARB that California's greenhouse gas amendments do not undermine EPA's prior determination regarding consistency with section 202(a) of the Act. Third, EPA agrees with CARB that California's greenhouse gas amendments do not present any new issues which would affect the previously issued waiver for California's greenhouse gas regulations. Therefore, I confirm that CARB's greenhouse gas amendments are within the scope of EPA's waiver of preemption for California's greenhouse gas regulations.

While EPA has confirmed that the amendments to California's greenhouse gas regulations are within the scope of EPA's prior waiver, we have also, in the alternative analyzed California's greenhouse gas regulations, as amended, under the criteria for a full waiver. Based on that analysis, we have determined that EPA could not deny a waiver of preemption for California's regulations, as amended. California has made a determination that its regulations as amended are at least as protective as the Federal GHG standards, and those opposing the waiver have not met the burden of demonstrating that any of the three statutory criteria for a denial under section 209(b)(1) have been met. Therefore, having given consideration to all the material submitted for this record, and other relevant information, I find that I cannot make the determinations required for a denial of a waiver pursuant to section 209(b) of the Act. I find that, even if California's revisions to its greenhouse gas standards were not within-the-scope of its earlier waiver, California's amended motor vehicle greenhouse gas emission regulations would receive a full waiver. Consequently, even if the amendments were not within the scope of the earlier waiver, I am, in the alternative, granting California a full waiver of preemption for its amended motor vehicle greenhouse gas regulations.

My decision will affect not only persons in California, but also manufacturers outside the State who must comply with California's requirements in order to produce vehicles for sale in California. For this reason, I determine and find that this is a final action of national applicability for purposes of section 307(b)(1) of the Act. Pursuant to section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeals for the District of Columbia Circuit. Petitions for review must be filed by August 15, 2011. Judicial review of this final action may not be obtained in subsequent enforcement proceedings, pursuant to section 307(b)(2) of the Act.

IV. Statutory and Executive Order Reviews

As with past authorization and waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Further, the Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

Dated: June 8, 2011.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. 2011–14686 Filed 6–13–11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2011–0431, FRL–9318–5]

Protection of Stratospheric Ozone: Request for Methyl Bromide Critical Use Exemption Applications for 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the critical use exemption from the phaseout of methyl bromide for 2014. Critical use exemptions last only one year. All entities interested in obtaining a critical use exemption for 2014 must provide EPA with technical and economic information to support a ''critical use'' claim and must do so by the deadline specified in this notice even if they have applied for an exemption in previous years. Today's notice also invites interested parties to provide EPA with new data on the technical and economic feasibility of methyl bromide alternatives.

DATES: Applications for the 2014 critical use exemption must be postmarked on or before August 15, 2011.

ADDRESSES: EPA encourages users to submit their applications electronically to Jeremy Arling, Stratospheric Protection Division, at *arling.jeremy@epa.gov.* If the application is submitted electronically, applicants must fax a signed copy of Worksheet 1 to 202–343–2338 by the application deadline. Applications for the methyl bromide critical use exemption can also be submitted by U.S. mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Team, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by courier delivery to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St., NW., Room 1047E, Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: *General Information:* U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996; also *http://www.epa.gov/ozone/mbr.*

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503P), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8136. E-mail: *chism.bill@epa.gov.*

Regulatory Information: Jeremy Arling, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–343–9055. E-mail: *arling.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What do I need to know to respond to this request for applications?

A. Who can respond to this request for information?

Entities interested in obtaining a critical use exemption must complete the application form available at *http://www.epa.gov/ozone/mbr/cueinfo.html.* The application may be submitted either by a consortium representing multiple users who have similar circumstances or by individual users who anticipate needing methyl bromide in 2014 and have evaluated alternatives and as a result of that evaluation, believe they have no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application).

In addition to requesting information from applicants for the critical use exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g., technical and/or economic feasibility research).

B. Who can I contact to find out whether a consortium is submitting an application for my methyl bromide use?

You should contact your local, state, regional or national commodity association to find out whether it plans to submit an application on behalf of your commodity group. Additionally, you should contact your state regulatory agency (generally this will be the state's agriculture or environmental protection agency) to receive information about its involvement in the process. If your state agency has chosen to participate, EPA recommends that you first submit your application to the state agency, which will then forward applications to EPA. The National Pesticide Information Center Web site identifies the lead pesticide agency in each state (*http://npic.orst.edu/state1.htm*).

C. How do I obtain an application form for the methyl bromide critical use exemption?

An application form for the methyl bromide critical use exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA's Web site: *http://www.epa.gov/ozone/mbr/cueinfo.html;*
2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;
3. PDF format and Microsoft Excel at Docket ID No. EPA–HQ–OAR–2011–0431. The docket can be accessed at the *http://www.regulations.gov* site. To obtain hard copies of docket materials, please e-mail the EPA Docket Center: *a-and-r-docket@epa.gov.*

D. What must applicants address when applying for a critical use exemption?

To support the assertion that a specific use of methyl bromide is ''critical,'' applicants must demonstrate that there are no technically and economically feasible alternatives available for that use. In 2011, the U.S. submitted an index of alternatives, which includes the current registration status of available and potential alternatives, to the Ozone Secretariat. That index is reproduced in Table 1 and can be accessed at *http://www.epa.gov/ozone/mbr/alts.html.* Specifically, applications must include the following information for the U.S. to successfully defend its nominations for critical uses. The information requested below is included in the application form but we are highlighting specific areas that applicants must address.

Commodities such as dried fruit and nuts: Applicants must address potential pest losses, quality, timing changes and economic implications to producers when converting to alternatives such as: sulfuryl fluoride and phosphine. If relevant, the applicant should also include the costs to retrofit equipment or design and construct new fumigation chambers for these uses. Applicants must include information on the amount of methyl bromide and any other fumigants used as well as the amounts of commodity treated with each fumigant. Include information on the size of fumigation chambers where methyl bromide is used, the percent of commodity fumigated under tarps, the length of the harvest season, peak of the harvest season and duration, and volume of commodity treated daily at the harvest peak. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) that you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their commodity.

Structures and Facilities (flour mills, rice mills, pet food): Applicants must address potential pest losses, quality, timing changes and economic implications to producers when converting to alternatives such as: sulfuryl fluoride, micro-sanitation, and heat. If relevant, the applicant should include the costs to retrofit equipment for these pest control methods. List how many mills have been fumigated with methyl bromide over the last three years, rate, volume and target Concentration—Time (CT) of methyl bromide at each location, volume of each facility, number of fumigations per year, and date facility was constructed. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE. Also include information on what pest control practices organic producers are using for their facilities.

Ham: List how many facilities have been fumigated with methyl bromide over the last three years, rate, volume and target CT of methyl bromide at each location, volume of each facility, number of fumigations per year, and date facility was constructed. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

Cucurbits, Eggplant, Pepper, and Tomato: Applicants must address potential yield, quality, and timing changes or economic implications for growers and/or your region's production of these crops when converting to alternatives such as: iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and dimethyl disulfide (DMDS) and any fumigationless system (if data are available). If relevant, the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

Strawberry Fruit: Applicants must address potential yield, quality, and timing changes, or economic implications for growers when converting to alternatives such as:

iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and any fumigationless system (if data are available). If relevant, the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

Nursery stock, Orchard Replant, Ornamentals, and Strawberry Nursery: Applicants must address potential yield, quality, and timing changes, or economic implications for growers and your region's production of these crops when converting to alternatives such as: iodomethane plus chloropicrin, the Georgia three way mixture of 1,3-dichloropropene plus chloropicrin plus metam (sodium or potassium), and dimethyl disulfide (if registered in your state), and steam. If relevant the applicant should include the costs to retrofit equipment for these uses. The Agency must have a description of your future research plans which includes the pest(s), chemical(s) or management practice(s) you will be testing in the future to support this CUE.

E. What if I applied for a critical use exemption in a previous year?

Critical use exemptions are valid for only one year and do not renew automatically. Users desiring to obtain an exemption for 2014 must apply to EPA. Because of the latest changes in registrations, costs, and economic aspects for producing critical use crops and commodities, all applicants will be required to fill out the application form completely.

F. What if I submit an incomplete application?

EPA will not accept any applications postmarked after August 15, 2011. If the application is postmarked by the deadline but is incomplete or missing any data elements, EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. If the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call an applicant for further clarification of an application, even if it is complete.

G. What portions of the applications will be considered confidential business information?

You may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as ''trade secret,'' ''proprietary,'' or ''company confidential.'' You should clearly identify the allegedly confidential portions of otherwise non-confidential documents, and you may submit them separately to facilitate identification and handling by EPA. If you desire confidential treatment only until a certain date or until the occurrence of a certain event, your notice should state that. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR part 2, subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when EPA receives it, EPA may make it available to the public without further notice.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the ''Worksheet 6: Application Summary'' page of the application any information that you wish to claim as confidential business information. Any information on Worksheet 6 shall not be considered confidential and will not be treated as such by the Agency. EPA will place a copy of Worksheet 6 in the public domain. Please note, claiming business confidentiality may delay EPA's ability to review your application.

II. What is the legal authority for the critical use exemption?

A. What is the Clean Air Act (CAA) authority for the critical use exemption?

In October 1998, Congress amended the Clean Air Act to require EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries and to allow EPA to provide a critical use exemption. These amendments were codified in Section 604 of the Clean Air Act, 42 U.S.C. 7671c. Under EPA implementing regulations, methyl bromide production and consumption were phased out as of January 1, 2005. Section 604(d)(6), as added in 1998, allows EPA to exempt the production and import of methyl bromide from the phaseout for critical uses, to the extent consistent with the Montreal Protocol.

EPA regulations at 40 CFR 82.4 prohibit the production and import of methyl bromide in excess of the amount of unexpended critical use allowances held by the producer or importer, unless authorized under a separate exemption. Methyl bromide produced or imported by expending critical use allowances may be used only for the appropriate category of approved critical uses as listed in Appendix L to the regulations (40 CFR 82.4(p)(2)). The use of methyl bromide that was produced or imported through the expenditure of production or consumption allowances prior to 2005 is not confined to critical uses under EPA's phaseout regulations; however, other restrictions may apply.

B. What is the Montreal Protocol authority for the critical use exemption?

The Montreal Protocol provides that the Parties may exempt ''the level of production or consumption that is necessary to satisfy uses agreed by them to be critical uses'' (Art. 2H para 5). The Parties to the Protocol included this language in the treaty's methyl bromide phaseout provisions in recognition that alternatives might not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be ''critical uses.''

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a ''critical use'' determination and an exemption from the production and consumption phaseout:

(a) That a use of methyl bromide should qualify as ''critical'' only if the nominating Party determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to

evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination. * * * Non-Article 5 Parties [*e.g.,* developed countries, including the U.S.] must demonstrate that research programs are in place to develop and deploy alternatives and substitutes. * * *

EPA has defined ''critical use'' in its regulations at 40 CFR 82.3 in a manner similar to Decision IX/6 paragraph (a).

C. What is the timing for applications for the 2014 control period?

There is both a domestic and international component to the critical use exemption process. The following outline projects a timeline for the process for the 2014 critical use exemption.

June 14, 2011: Solicit applications for the methyl bromide critical use exemption for 2014.

August 15, 2011: Deadline for submitting critical use exemption applications to EPA.

Fall 2011: U.S. Government (through EPA, Department of State, U.S. Department of Agriculture, and other interested Federal agencies) prepares U.S. Critical Use Nomination package.

January 24, 2012: Deadline for U.S. Government to submit U.S. nomination package to the Protocol Parties.

Early 2012: Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC) reviews Parties' nominations for critical use exemptions.

Mid 2012: Parties consider TEAP/MBTOC recommendations.

November 2012: Parties decide whether to authorize critical use exemptions for methyl bromide for production and consumption in 2014.

Mid 2013: If the Parties authorize critical uses, EPA publishes proposed rule for allocating critical use allowances in the U.S. for 2014.

Late 2013: EPA publishes final rule allocating critical use allowances in the U.S. for 2014.

January 1, 2014: Critical use exemption permits the limited production and import of methyl bromide for specified uses for the 2014 control period.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Dated: June 6, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–14571 Filed 6–13–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2011–0503; FRL–9318–9]

Human Studies Review Board Advisory Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the Human Studies Review Board (HSRB) Advisory Committee.

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates with expertise in bioethics and toxicology to be considered for appointment to its Human Studies Review Board (HSRB) advisory committee. Vacancies are anticipated to be filled by September 1, 2011. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

Background: On February 6, 2006, the Agency published a final rule for the protection of human subjects in research (71 FR 24 6138) that called for creating a new, independent human studies review board (*i.e.,* HSRB). The HSRB is a Federal advisory committee operating in accordance with the Federal Advisory Committee Act (FACA) 5 U.S.C. App. 2 § 9 (Pub. L. 92–463). Each year the HSRB experiences membership terms expiring, therefore needs candidates for consideration as replacement members. The HSRB provides advice, information, and recommendations to EPA on issues related to scientific and ethical aspects of human subjects research. The major objectives of the HSRB are to provide advice and recommendations on: (1) Research proposals and protocols; (2) reports of completed research with human subjects; and (3) how to strengthen EPA's programs for protection of human subjects of research. The HSRB reports to the EPA Administrator through EPA's Science Advisor. General information concerning the HSRB, including its charter, current membership, and activities can be found on the EPA Web site at *http://www.epa.gov/osa/hsrb/.*

HSRB members serve as special government employees or regular government employees. Members are appointed by the EPA Administrator for either two or three year terms with the possibility of reappointment to additional terms, with a maximum of six years of service. The HSRB usually meets four times a year and the typical workload for HSRB members is approximately 40 to 50 hours per meeting, including the time spent at the meeting. Responsibilities of HSRB members include reviewing extensive background materials prior to meetings of the Board, preparing draft responses to Agency charge questions, attending Board meetings, participating in the discussion and deliberations at these meetings, drafting assigned sections of meeting reports, and helping to finalize Board reports. EPA compensates special government employees for their time and provides reimbursement for travel and other incidental expenses associated with official government business. Currently, EPA is seeking nominations for individuals with expertise in bioethics and toxicology. EPA values and welcomes diversity. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The qualifications of nominees for membership on the HSRB will be assessed in terms of the specific expertise sought for the HSRB. Qualified nominees who agree to be considered further will be included in a ''Short List.'' The Short List of nominees' names and biographical sketches will be posted for 14 calendar days for public comment on the HSRB Web site: *http://www.epa.gov/osa/hsrb/index.htm.* The public will be encouraged to provide additional information about the nominees that EPA should consider. At the completion of the comment period, EPA will select new Board members from the Short List. Candidates not selected for HSRB membership at this time may be considered for HSRB membership as vacancies arise in the future or for service as consultants to the HSRB. The Agency estimates that the names of Short List candidates will be posted in July 2011. However, please be advised that this is an approximate time frame and the date is subject to change. If you have any questions concerning posting of Short List candidates on the HSRB Web site, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Members of the HSRB are subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. In anticipation of this requirement, each nominee will be asked to submit confidential financial information that shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. The information provided is strictly confidential and will not be disclosed to the public. Before a candidate is considered further for

service on the HSRB, EPA will evaluate each candidate to assess whether there is any conflict of financial interest, appearance of a lack of impartiality, or prior involvement with matters likely to be reviewed by the Board.

Nominations will be evaluated on the basis of several criteria, including: Their professional background, expertise and experience that would contribute to the diversity of perspectives of the committee; interpersonal, verbal and written communication skills and other attributes that would contribute to the HSRB's collaborative process; consensus building skills; absence of any financial conflicts of interest or the appearance of a lack of impartiality, or lack of independence, or bias; and the availability to attend meetings and administrative sessions, participate in teleconferences, develop policy recommendations to the Administrator, and prepare recommendations and advice in reports.

Nominations should include a resume or C.V. providing the nominee's educational background, qualifications, leadership positions in national associations or professional societies, relevant research experience and publications along with a short (one page) biography describing how the nominee meets the above criteria and other information that may be helpful in evaluating the nomination, as well as the nominee's current business address, e-mail address, and daytime telephone number. Interested candidates may self-nominate.

To help the Agency in evaluating the effectiveness of its outreach efforts, nominees are requested to inform the Agency of how you learned of this opportunity.

Final selection of HSRB members is a discretionary function of the Agency and will be announced on the HSRB Web site at *http://www.epa.gov/osa/hsrb/index.htm* as soon as selections are made.

ADDRESSES: Submit your nominations by July 6, 2011, identified by Docket ID No. EPA–HQ–ORD–2011–0503, by any of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov.

USPS Mail: ORD Docket, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Hand or Courier Delivery: EPA Docket Center (EPA/DC), Room 3304, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–ORD–2011–0503. Deliveries are accepted from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: Jim Downing, Designated Federal Official, Office of the Science Advisor, Mail Code 8105R, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* (202) 564–2468, *fax number:* (202) 564–2070, *e-mail: downing.jim@epa.gov.*

Dated: June 8, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–14681 Filed 6–13–11; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act; Special Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on June 22, 2011, from 10 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Dale L. Aultman, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

- Request to Merge U.S. AgBank FCB with CoBank ACB

Dated: June 10, 2011.

Dale L. Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2011–14855 Filed 6–10–11; 4:15 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501—3520), the Federal Communications Commission invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s). Comments are requested concerning: (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 burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 15, 2011. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Submit your PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser@omb.eop.gov* and to Benish Shah, Federal Communications Commission, via the Internet at *Benish.Shah@fcc.gov.* To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Benish Shah, Office of Managing Director, (202) 418–7866.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0532.

Title: Sections 2.1033 and 15.121, Scanning Receiver Compliance Exhibits.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 25 respondents; 25 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: One time reporting requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

Total Annual Burden: 25 hours.

Annual Cost Burden: $1,250.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission's rules require that certain portions of scanning receiver applications for certification will remain confidential after the effective date of the grant of the application. No other assurances of confidentiality are provided to respondents.

Needs and Uses: This collection will be submitted as an extension (no change in reporting and/or third party disclosure requirements) after this 60-day comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance.

The FCC rules under 47 CFR 2.1033 and 15.121 require manufacturers of scanning receivers to design their equipment so that it has 38 dB of image rejection for Cellular Service frequencies, tuning, control and filtering circuitry are inaccessible and any attempt to modify the scanning receiver to receive Cellular Service transmissions will likely render the scanning receiver inoperable. The Commission's rules also require manufacturers to submit information with any application for certification that describes the testing method used to determine compliance with the 38 dB image rejection ratio, the design features that prevent modification of the scanning receiver to receive Cellular Service transmissions, and the design steps taken to make tuning, control, and filtering circuitry inaccessible. Furthermore, the FCC requires equipment to carry a statement assessing the vulnerability of the scanning receiver to modification and to have a label affixed to the scanning receiver, similar to the following as described in section 15.121:

Warning: Modification of this device to receive cellular radiotelephone service signals is prohibited under FCC Rules and Federal Law.

The Commission uses the information required in this equipment authorization process to determine whether the equipment that is being marketed complies with the Congressional mandate in the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) and applicable Commission rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–14642 Filed 6–13–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–11–11DD]

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 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Focus Group Study for Raising Public Awareness of Deep Vein Thrombosis/Pulmonary Embolism—New—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Division of Blood Disorders, located within the National Center on Birth Defects and Developmental Disabilities, implements health promotion and wellness programs designed to prevent secondary conditions in people with bleeding and clotting disorders.

There are few public health problems as serious as deep vein thrombosis (DVT) and pulmonary embolism (PE), yet these conditions receive little attention. DVT/PE is an underdiagnosed, serious, preventable medical condition that occurs when a blood clot forms in a deep vein. These clots usually develop in the lower leg, thigh, or pelvis, but they can also occur in the arm. In more than one third of people affected by DVT, clots can travel to the lungs and cause PE, a potentially fatal condition.

The precise number of people affected by DVT/PE is unknown, but estimates range from 300,000 to 600,000 annually in the United States. DVT/PE is associated with substantial morbidity and mortality: One third of people with DVT/PE will have a recurrence within 10 years and one third of people die within 1 month of diagnosis. Among people who have had a DVT, one third will have long-term complications (post-thrombotic syndrome), such as swelling, pain, discoloration, and scaling in the affected limb. In some cases, the symptoms can be so severe that a person can become disabled. More troubling, sudden death is the first symptom in about one quarter of people who have a PE.

The Division of Blood Disorders submitted questions to the 2007 *HealthStyles* survey to determine the public's knowledge of DVT, its common symptoms, and risk factors. Although over 60% of respondents identified pain and swelling as symptoms, 60% did not identify tenderness (often the first sign of DVT) as a symptom. Only 38% of respondents knew that a DVT was a blood clot in a vein, and most could not identify common risk factors for DVT such as sitting for a long period of time (*e.g.,* during air travel); having a leg or foot injury; having a family member who has had a DVT; taking birth control pills; or getting older; and certain groups could not identify risk factors that specifically applied to their risk. The results of this survey demonstrate the need for greater awareness of DVT and its risk factors and the data show that there are many opportunities to develop audience specific messages that are age specific and culturally appropriate.

Much of the morbidity and mortality associated with DVT/PE could be prevented with early and accurate diagnosis and management. DVT/PE is preventable. It is important for people to be able to recognize the signs and symptoms and know when to seek care and available treatment. Individuals, families, and their support communities can reduce their risk by understanding DVT/PE and its risk factors. DVT/PE affects people of all races and ages.

Many of the acquired risks such as obesity, advanced age, air travel, chronic diseases, cancer, and hospitalization are increasing in the United States, and we can expect to see increasing numbers of people affected by DVT/PE.

The CDC's Division of Blood Disorders will conduct focus groups to develop messaging concepts that will be used in a public awareness campaign to build knowledge and awareness of DVT/PE, increase recognition of the symptoms and risk factors for DVT/PE, and empower people to take action.

The project will address these objectives in two stages: in the first stage the Contractor selected will conduct eight (8) formative focus groups with nine (9) participants in each focus group to explore consumer knowledge, attitudes, and beliefs (KABs) toward DVT. Message concepts will be developed from insights emerging from this exploratory research phase. The Contractor will conduct eight (8) focus groups with nine (9) participants in each focus group during the second stage to test the message concepts and identify possible ways to present the messages.

The Contractor selected will work with CDC to identify and recruit focus group participants. Formative research participants will include adults (aged 25–64) who have been hospitalized in the last year and seniors (aged 65–80). Message testing participants will include adults (aged 25–64) who have been hospitalized in the last year and seniors (aged 65–80). Participants will be recruited to participate in one of sixteen in-person focus groups that will be conducted in the following cities:

- Atlanta, Baltimore, Pittsburgh, and Tampa (formative research task), and
- Atlanta, Baltimore, Pittsburgh, and Tampa (message testing task).

It is estimated that a total of 144 respondents will have to be screened in order to recruit 36 focus group participants for each year. There are no costs to the respondents other than their time. The estimated annualized burden hours are 125.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hours)
Seniors (65–80) ..... Adults (25–64) recently hospitalized	Participant Screener	144	1	5/60
Seniors (65–80) ..... Adults (25–64) recently hospitalized	Participant Re-screener	36	1	9/60
Seniors (65–80) ..... Adults (25–64) recently hospitalized	Moderator's Guide: Formative Research Focus Groups.	36	1	1.5
Seniors (65–80) ..... Adults (25–64) recently hospitalized	Moderator's Guide: Message Testing Focus Groups.	36	1	1.5
Seniors (65–80) ..... Adults (25–64) recently hospitalized	Informed Consent Form	36	1	6/60

Dated: June 3, 2011.

Daniel L. Holcomb,

Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. 2011–14422 Filed 6–13–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number CDC–2011–0006]

[RIN 0920–ZA03]

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH).

ACTION: Notification of proposed altered system of records; clarification.

SUMMARY: On May 27, 2011, the Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), published a Notification of Proposed Altered System of Records for its system of records, 09–20–0147, ''Occupational Health Epidemiological Studies and EEOICPA Program Records, HHS/CDC/NIOSH.'' This document offers clarifications to the May publication.

DATES: Comments must be received on or before June 27, 2011.

ADDRESSES: You may submit written comments, identified by the Privacy Act System of Records Number 09–20–0147, to the following address: HHS/CDC Senior Official for Privacy (SOP), Office of the Chief Information Security Officer (OCISO), 4770 Buford Highway—M/S: F–35, Atlanta, GA 30341.

You may also submit written comments electronically to *http://www.regulations.gov.* Comments must be identified by Docket No. CDC–2011–0006. Please follow directions at *http://www.regulations.gov* to submit comments.

All relevant comments received will be posted publicly to *http://www.regulations.gov* without change, including any personal or proprietary information provided. An electronic version of the draft is available to download at *http://www.regulations.gov.*

Written comments, identified by Docket No. CDC–2011–0006, and/or Privacy Act System of Records Number 09–20–0147, will be available for public inspection Monday through Friday, except for legal holidays, from 9 a.m. until 3 p.m., Eastern Daylight Time, at 4770 Buford Highway—M/S: F–35, Atlanta, GA 30341. Please call ahead to (770) 488–8660, and ask for a representative from Office of the Chief Information Security Officer (OCISO) to schedule your visit. Comments may also be viewed at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Beverly E. Walker, Chief Privacy Officer, Centers for Disease Control and Prevention, 4770 Buford Highway—M/S: F–35, Atlanta, Georgia 30341, (770) 488–8660. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: In the May 27, 2011, notice (76 FR 31212), CDC provided information regarding the

amendment of the categories of individuals covered by the system of records; the categories of records; the authorities; and the purposes for maintenance of the system of records. In addition, we proposed to add new routine uses. The purpose of these modifications was to provide notice as to how the National Institute for Occupational Safety and Health (NIOSH), a component of CDC, is complying with the Privacy Act in executing its responsibilities under the James Zadroga 9/11 Health and Compensation Act of 2010 found at Title XXXIII of the Public Health Service Act, 42 U.S.C. 300mm—300mm–61 (Title XXXIII). CDC offers the following clarifications.

1. We are adding a clause to the first sentence of the section entitled ''Categories of records in the system'' to address the information that is in the record system for individuals presumed to be enrolled in the World Trade Center (WTC) Health Program as of July 1, 2011. We are also adding a sentence at the end of the section to notify individuals that information that is provided to HHS that is from a system of records under the control of the Terrorist Screening Center (TSC), Federal Bureau of Investigation, Department of Justice, remains law enforcement information and retains the exemptions listed in Justice/FBI–019, 72 FR 47073 (Aug. 22, 2007) and promulgated under 28 CFR 16.96(r).

Accordingly, that section now reads, in relevant part:

Categories of records in the system: * * * Also included are applications for enrollment in the World Trade Center (WTC) Health Program and, information on individual enrolled or otherwise claiming eligibility and qualification for enrollment; once enrolled, information on these individuals may include screening and medical records, and financial records related to payment and reimbursements for care under the WTC program. Information that is provided to HHS that is from a system of records under the control of the Terrorist Screening Center (TSC), Federal Bureau of Investigation, Department of Justice, remains law enforcement information and retains the exemptions listed in Justice/FBI–019, 72 FR 47073 (Aug. 22, 2007) and promulgated under 28 CFR 16.96(r).

2. Provisions of the Zadroga Act mandate that no individual on the terrorist watchlist may be qualified as eligible to receive the benefits under this Act. In order to implement this provision, NIOSH published a routine use that would permit disclosure of certain personal identifying information to the Department of Justice and its contractors to provide terrorist screening support in accordance with this statutory obligation to qualify individuals under this program. We are retaining the language that describes the information released to the Department of Justice and that this disclosure is for the purpose of permitting the Department of Justice to perform the terrorist screening required by Title XXXIII of the Public Service Act. We have added a sentence at the end of the description of the routine uses for the WTC Health Program records affirming that NIOSH will comply with applicable Federal law with respect to the records in this system. We have also added language to provide a more complete explanation of the information the Department of Justice will retain consistent with Justice/FBI–019, Terrorist Screening Center Records System. That routine use has been clarified, as follows:

Disclosure to the Department of Justice and its contractors to provide terrorist screening support in accordance with NIOSH's statutory obligation to determine whether an individual is on the ''terrorist watch list'' as specified in Section 3311 and Section 3321 of the Zadroga Act and is eligible and qualified to be enrolled or certified in the WTC Health Program as specified by statute. Disclosure by NIOSH, under this routine use, will be limited to only the information that is necessary to determine eligibility and qualification under the statute. The Department of Justice will only retain information provided by HHS that relates to (1) Individuals known or appropriately suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (''known or suspected terrorists''); (2) individuals identified during the terrorism screening process as a possible identity match to a known or suspected terrorist; (3) individuals who are misidentified as a possible identity match to a known or suspected terrorist in order to expedite future screening of those individuals and to support the appeals process; and/or (4) individuals about whom a terrorist watchlist-related appeal inquiry has been made. Information that does not fall into one of the above listed categories will not be retained by the Department of Justice.

3. We are modifying the *Retention and disposal* section to delete any reference to the Department of Justice which adheres to its own records retention schedule. This section will now read as follows:

Retention and disposal: Records are retained and disposed of according to the provisions of the CDC Electronic Records Control Schedule for NIOSH records. Research records are maintained in the agency for three years after the close of the study. Records transferred to the Federal Records Center when no longer needed for evaluation and analysis are destroyed after 75 years for epidemiologic studies, unless needed for further study. Records from health hazard evaluations will be retained at least 20 years. Energy Employees Occupational Illness Compensation Program Act (EEOICPA) program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years. WTC Health Program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years.

In our May 27, 2011, notice, we provided opportunity to comment until June 27, 2011, on the new routine uses in the altered system of records as is required under the Privacy Act, 5 U.S.C. 552a(e)(11). By publishing in the **Federal Register**, the agency provides individuals with notice of the information that the agency will be disclosing and the purpose of that disclosure. *Britt* v. *Naval Investigative Service,* 886 F.2d 544, 548 (3rd Cir. 1989). ''A new 'routine use' is one which involves disclosure of records for a new purpose * * * or to a new recipient or category of recipients.'' 40 FR 28948, 28966 (July 9, 1975). In the May 27, 2011, notice, we specified we would be providing information to the Department of Justice for the purpose of that agency conducting the terrorist screening under specified provisions of Title XXXIII of the Public Health Service Act and that the information disclosed would be limited to that information needed for this screening purpose. The clarifications provided in this notice do not establish a new purpose, new recipient or category of recipients, notwithstanding additional information provided as to the retention by the Department of Justice of certain information identified in the May 27, 2011, notice. Since the additional information does not create a new routine use or substantively alter the language pertaining to the information that NIOSH will disclose or why it is disclosing it, the comment period will remain the same and comments must be received on or before June 27, 2011 as specified in the May 27, 2011 notice specified above. The entire resulting system of records notice, as amended and clarified, appears below.

Dated: June 7, 2011.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

SYSTEM NAME:

Occupational Health Epidemiological Studies and EEOICPA Program Records and WTC Health Program Records, HHS/CDC/NIOSH

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

WTC Health Program, NIOSH, Century Center Boulevard, Building 2400, Mail Stop E–74, Atlanta, GA 30329.

Division of Surveillance, Hazard Evaluation, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226.

Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), 1095 Willowdale Road, Morgantown, WV 20505–2888.

Pittsburgh Research Laboratory, NIOSH, 626 Cochrans Mill Road, Pittsburgh, PA 15156.

Spokane Research Laboratory, NIOSH, 315 E. Montgomery Avenue, Spokane, WA 99207.

Office of Compensation Analysis and Support (OCAS), NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, and Federal Records Center, 3150 Bertwynn Drive, Dayton, OH 45439.

Data are also occasionally located at contractor sites as studies are developed, data collected, and reports written. A list of contractor sites where individually identifiable data are currently located is available upon request to the system manager.

Also, occasionally data may be located at the facilities of collaborating researchers where analyses are performed, data collected and reports written. A list of these facilities is available upon request to the system manager. Data may be located only at those facilities that have an adequate data security program and the collaborating researcher must return the data to NIOSH or destroy individual identifiers at the conclusion of the project.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

That segment of the population exposed to physical and/or chemical agents or other workplace hazards that may damage the human body in any way. Some examples are: (1) Organic carcinogens; (2) inorganic carcinogens; (3) mucosal or dermal irritants; (4) fibrogenic materials; (5) acute toxic agents including sensitizing agents; (6) neurotoxic agents; (7) mutagenic (male and female) and teratogenic agents; (8) bio-accumulating non-carcinogen agents; (9) chronic vascular disease-causing agents; and (10) ionizing radiation. Also included are those individuals in the general population who have been selected as control groups. Workers employed by the Department of Energy and its predecessor agencies and their contractors are also included, as are cancer-related claimants under the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). Individuals enrolled in or otherwise claiming eligibility and qualification for enrollment in the WTC Health Program created under Title XXXIII of the Public Health Service Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical exams, sputum cytology results, questionnaires, urine test records, X-rays, medical history, pulmonary function test records, medical disability forms, blood test records, hearing test results, smoking history, occupational histories, previous and current employment records, union membership records, driver's license data, demographic information, exposure history information and test results are examples of the records in this system. The specific types of records collected and maintained are determined by the needs of the individual study. Also included are records of cancer-related claimants under EEOICPA.'' Also included are applications for enrollment in the World Trade Center (WTC) Health Program and information on individuals enrolled in or otherwise claiming eligibility and qualification for enrollment; once enrolled, information on these individuals may include screening and medical records, and financial records related to payment and reimbursements for care under the WTC program. Information that is provided to HHS that is from a system of records under the control of the Terrorist Screening Center (TSC), Federal Bureau of Investigation, Department of Justice remains law enforcement information and retains the exemptions listed in Justice/FBI–019, 72 FR 47,073 (Aug. 22, 2007) and promulgated under 28 CFR 16.96 (r).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Public Health Service Act, Section 301, ''Research and Investigation'' (42 U.S.C. 241); Occupational Safety and Health Act, Section 20, ''Research and Related Activities'' (29 U.S.C. 669); the Federal Mine Safety and Health Act of 1977, Section 501, ''Research'' (30 U.S.C. 951) and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA) (42 U.S.C.S. 7384, *et seq.*); and the Public Health Service Act, Title XXXIII, ''World Trade Center Health Program'' (42 U.S.C. 300mm–300mm–61).

PURPOSE(S):

Studies carried out under this system are to evaluate mortality and morbidity of occupationally related diseases and injuries, to determine their causes, and to lead toward prevention of occupationally related diseases and injuries in the future. EEOICPA records are maintained to enable NIOSH to fulfill its dose reconstruction responsibilities under the Act. WTC Health Program records in this system are maintained and used to enable NIOSH to fulfill WTC Program Administrator responsibilities make determinations about eligibility and qualification, provide for medical care, pay for that care, and coordinate with other health benefit programs under Title XXXIII of the Public Health Service Act, 42 U.S.C. 300mm–300mm–61.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the event of litigation where the defendant is: (a) The Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable that Department to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to the Department of Justice when (1) HHS, or

any component thereof; or (2) any employee of HHS in his or her official capacity; or (3) any employee of HHS in his or her individual capacity where the Department of Justice or HHS has agreed to represent the employee; or (4) the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice is deemed by HHS to be relevant and necessary to the litigation; provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

Records may be disclosed to a contractor performing or working on a contract for HHS and who has a need to have access to the information in the performance of its duties or activities for the HHS in accordance with law and with the contract. The contractor is required to comply with the applicable provisions of the Privacy Act.

Records subject to the Privacy Act are disclosed to private firms for data entry, scientific support services, nosology coding, computer systems analysis and computer programming services. The contractors promptly return data entry records after the contracted work is completed. The contractors are required to maintain Privacy Act safeguards.

Certain diseases or exposures may be reported to State and/or local health departments where the State has a legally constituted reporting program for communicable diseases and which provides for the confidentiality of the information.

Disclosure of records or portions of records may be made to a Member of Congress or a Congressional staff member submitting a verified request involving an individual who is entitled to the information and has requested assistance from the Member or staff member. The Member of Congress or Congressional staff member must provide a copy of the individual's written request for assistance.

Disclosure may be made to NIOSH collaborating researchers (*e.g.,* NIOSH contractors, grantees, cooperative agreement holders, or other Federal or State scientists) in order to accomplish the research purpose for which the records are collected. The collaborating researchers must agree in writing to comply with the confidentiality provisions of the Privacy Act and NIOSH must have determined that the researchers' data security procedures will protect confidentiality.

THE FOLLOWING ROUTINE USES APPLY ONLY TO EPIDEMIOLOGICAL STUDIES:

In the event of litigation initiated at the request of NIOSH, the Institute may disclose such records as it deems desirable or necessary to the Department of Justice and to the Department of Labor, Office of the Solicitor, where appropriate, to enable the Departments to effectively represent the Institute, provided such disclosure is compatible with the purpose for which the records were collected. The only types of litigation proceedings that NIOSH is authorized to request are: (1) Enforcement of a subpoena issued to an employer to provide relevant information; and (2) administrative search warrants to obtain access to places of employment and relevant information therein and related contempt citations against an employer for failure to comply with a warrant obtained by the Institute; and (3) injunctive relief against employers or mine operators to obtain access to relevant information.

Portions of records (name, Social Security number if known, date of birth, and last known address) may be disclosed to one or more of the sources selected from those listed in Appendix I, as applicable. This may be done for obtaining a determination regarding an individual's health status and last known address. If the sources determine that the individual is dead, NIOSH may obtain death certificates, which state the cause of death, from the appropriate Federal, State or local agency. If the individual is alive, NIOSH may obtain information on health status from disease registries or on last known address in order to contact the individual for a health study or to inform him or her of health findings. This information on health status enables NIOSH to evaluate whether excess occupationally related mortality or morbidity is occurring.

Disclosure of epidemiologic study records pertaining to uranium workers may be made to the Department of Justice to be used in determining eligibility for compensation payments to the uranium workers or their survivors.

Records may be disclosed by CDC in connection with public health activities to the Social Security Administration for sources of locating information to accomplish the research or program purposes for which the records were collected.

THE FOLLOWING ROUTINE USES APPLY ONLY TO EEOICPA PROGRAM RECORDS:

Disclosure of dose reconstructions, epidemiologic study records and employment and medical information pertaining to Department of Energy employees and other cancer-related claimants covered under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Labor to be used in determining eligibility for compensation payments to such claimants and in defending its determinations under the Act.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to the Department of Energy, other Federal agencies, other government or private entities and to private-sector employers to permit these entities to retrieve records required to reconstruct radiation doses and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

Completed dose reconstruction reports for cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be released to the Department of Energy and the Department of Labor to permit these entities to fulfill EEOICPA and HHS dose reconstruction regulation requirements to notify claimants of their dose reconstruction results.

Disclosure of personal identifying information associated with cancer-related claims under the Energy Employees Occupational Illness Compensation Program Act may be made to identified witnesses as designated by the Office of Compensation Analysis and Support to assist NIOSH in obtaining information required to complete the dose reconstruction process and to enable NIOSH to evaluate petitions for inclusion in the Special Exposure Cohort.

Records may also be disclosed when deemed desirable or necessary, to the Department of Justice, and/or the Department of Labor, to enable those Departments to effectively represent the Department of Health and Human Services and/or the Department of Labor in litigation involving the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA).

THE FOLLOWING ROUTINE USES APPLY ONLY TO WTC HEALTH PROGRAM RECORDS:

Disclosure to the Department of Justice and its contractors to provide terrorist screening support in accordance with NIOSH's statutory obligation to determine whether an individual is on the ''terrorist watch list'' as specified in Section 3311 and Section 3321 of the Zadroga Act and is

eligible and qualified to be enrolled or certified in the WTC Health Program as specified by statute. Disclosure by NIOSH, under this routine use, will be limited to only the information that is necessary to determine eligibility and qualification under the statute. The Department of Justice will only retain information provided by HHS that relates to (1) Individuals known or suspected to be or have been engaged in conduct constituting, in preparation for, in aid of, or related to terrorism (''known or suspected terrorists''); (2) individuals identified during the terrorism screening process as a possible identity match to a known or suspected terrorist; (3) individuals who are misidentified as a possible identity match to a known or suspected terrorist in order to expedite future screening of those individuals and to support the appeals process; and/or (4) individuals about whom a terrorist watchlist-related appeal inquiry has been made. Information that does not fall into one of the above listed categories will not be retained by the Department of Justice. Disclosure of personally identifying information to applicable entities for the purpose of reducing or recouping WTC Health Program payments made to individuals under a workers' compensation law or plan of the United States, a State, or locality, or other work-related injury or illness benefit plan of the employer of such worker or public or private health plan as required under Title XXXIII of the Public Health Service Act. NIOSH will maintain, use, and disclose the information in the System of Records in accordance with applicable Federal law.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manager files, card files, electronic computer tapes, disks, files and printouts, microfilm, microfiche, and other files as appropriate.

RETRIEVABILITY:

Name, assigned identification number, or social security number.

SAFEGUARDS:

1. AUTHORIZED USERS:

A database software security package is utilized to control unauthorized access to the system. Access is granted to only a limited number of physicians, scientists, statisticians, and designated support staff or contractors, as authorized by the system manager to accomplish the stated purposes for which the data in this system have been collected.

2. PHYSICAL SAFEGUARDS:

Hard copy records are kept in locked cabinets in locked rooms. Guard service in buildings provides screening of visitors. The limited access, secured computer room contains fire extinguishers and an overhead sprinkler system. Computer workstations and automated records are located in secured areas. Electronic anti-intrusion devices are in operation at the Federal Records Center.

3. PROCEDURAL SAFEGUARDS:

Data sets are password protected and/or encrypted. Protection for computerized records both on the mainframe and the NIOSH Local Area Network (LAN) includes programmed verification of valid user identification code and password prior to logging on to the system, mandatory password changes, limited log-ins, virus protection, and user rights/file attribute restrictions. Password protection imposes user name and password log-in requirements to prevent unauthorized access. Each user name is assigned limited access rights to files and directories at varying levels to control file sharing. There are routine daily backup procedures and secure off-site storage is available for backup tapes. Additional safeguards may be built into the program by the system analyst as warranted by the sensitivity of the data.

Employees and contractor staff who maintain records are instructed to check with the system manager prior to making disclosures of data. When individually identified data are being used in a room, admittance at either government or contractor sites is restricted to specifically authorized personnel. Privacy Act provisions are included in contracts, and the Project Director, contract officers and project officers oversee compliance with these requirements. Upon completion of the contract, all data will be either returned to CDC or destroyed, as specified by the contract.

4. IMPLEMENTATION GUIDELINES:

The safeguards outlined above are in accordance with the HHS Information Security Program Policy and FIPS Pub 200, ''Minimum Security Requirements for Federal Information and Information Systems.'' Data maintained on CDC's Mainframe and the NIOSH LAN are in compliance with OMB Circular A–130, Appendix III. Security is provided for information collection, processing, transmission, storage, and dissemination in general support systems and major applications. The CDC LAN currently operates under a Microsoft Windows Server and is in compliance with applicable security standards.

RETENTION AND DISPOSAL:

Records are retained and disposed of according to the provisions of the CDC Electronic Records Control Schedule for NIOSH records. Research records are maintained in the agency for three years after the close of the study. Records transferred to the Federal Records Center when no longer needed for evaluation and analysis are destroyed after 75 years for epidemiologic studies, unless needed for further study. Records from health hazard evaluations will be retained at least 20 years. EEOICPA program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years. WTC Health Program records are transferred to the Federal Records Center 15 years after the case file becomes inactive and are destroyed after 75 years.

Paper files that have been scanned to create electronic copies are disposed of after the copies are verified. Disposal methods include erasing computer tapes and burning or shredding paper materials.

SYSTEM MANAGER(S) AND ADDRESS:

Director, WTC Health Program, NIOSH, Century Center Boulevard, Building 2400, Mail Stop E–74, Atlanta, GA 30329.

Program Management Officer, Division of Surveillance, Hazard valuations, and Field Studies (DSHEFS), National Institute for Occupational Safety and Health (NIOSH), Robert A. Taft Laboratories, Rm. 40A, 4676 Columbia Parkway, Cincinnati, OH 45226.

Director, Division of Respiratory Disease Studies (DRDS), National Institute for Occupational Safety and Health (NIOSH), Bldg. ALOSH, Rm. H2920, 1095 Willowdale Road, Morgantown, WV 26505–2888.

Director, Pittsburgh Research Laboratory, NIOSH, 626 Cochrans Mill Road, Pittsburgh, PA 15156.

Director, Spokane Research Laboratory, NIOSH, 315 E. Montgomery Avenue, Spokane, WA 99207.

Director, Office of Compensation and Support (OCAS), NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226

Policy coordination is provided by: Director, National Institute for Occupational Safety and Health (NIOSH), Bldg. HHH, Rm. 715H, 200 Independence Avenue, SW., Washington, DC 20201.

NOTIFICATION PROCEDURE:

An individual may learn if a record exists about himself or herself by contacting the system manager at the above address. Requesters in person must provide driver's license or other positive identification. Individuals who do not appear in person must either: (1) Submit a notarized request to verify their identity; or (2) certify that they are the individuals they claim to be and that they understand that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Privacy Act subject to a $5,000 fine.

An individual who requests notification of or access to medical records shall, at the time the request is made, designate in writing a responsible representative who is willing to review the record and inform the subject individual of its contents at the representative's discretion. A subject individual will be granted direct access to a medical record if the system manager determines direct access is not likely to have adverse effect on the subject individual.

The following information must be provided when requesting notification: (1) Full name; (2) the approximate date and place of the study, if known; and (3) nature of the questionnaire or study in which the requester participated.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An accounting of disclosures that have been made of the record, if any, may be requested.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under System Manager above, reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

For research studies, vital status information is obtained from Federal, State and local governments and other available sources selected from those listed in Appendix I, but information is obtained directly from the individual and employer records, whenever possible. EEOICPA records are obtained from the individual subject and the employer's records. WTC Health Program Records are obtained from individual applicants and enrollees, from medical providers who have treated eligible individuals, and from data centers that are repositories of demographic and clinical information about WTC responders and survivors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix I—Potential Sources for Determination of Health Status, Vital Status and/or Last Known Address

Military records
Appropriate State Motor Vehicle Registration Departments
Appropriate State Driver's License Departments
Appropriate State Government Division of: Assistance Payments (Welfare), Social Services, Medical Services, Food Stamp Program, Child Support, Board of Corrections, Aging, Indian Affairs, Worker's Compensation, Disability Insurance
Retail Credit Association follow-up
Veterans Administration files
Appropriate employee union or association records
Appropriate company pension or employment records
Company group insurance records
Appropriate State Vital Statistics Offices
Life insurance companies
Railroad Retirement Board
Area nursing homes
Area Indian Trading Posts
Mailing List Correction Cards (U.S. Postal Service)
Letters and telephone conversations with former employees of the same establishment as cohort member
Appropriate local newspaper (obituaries)
Social Security Administration
Internal Revenue Service
National Death Index
Centers for Medicare & Medicaid Services
Pension Benefit Guarantee Corporation
State Disease Registries
Commercial Telephone Directories

[FR Doc. 2011–14807 Filed 6–10–11; 4:15 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

Centers for Medicare & Medicaid Services

Notice of Hearing; Reconsideration of Disapproval of Colorado State Plan Amendments (SPA) 10–034

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on August 4, 2011, at the CMS Denver Regional Office, Colorado State Bank Building, 1600 Broadway, Suite 700, Denver, Colorado 80202–4367 to reconsider CMS' decision to disapprove Colorado SPA 10–034.

DATES: Requests to participate in the hearing as a party must be received by the presiding officer by June 29, 2011.

FOR FURTHER INFORMATION CONTACT:

Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, *Telephone:* (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Colorado SPA 10–034 which was submitted on September 30, 2010, and disapproved on March 10, 2011. The SPA proposed to revise the methods and standards for establishing payment rates for non-brokered and brokered non-emergency medical transportation.

The disapproval was based on a finding that the State had not complied with the requirements of section 1902(a)(73)(A) of the Social Security Act to solicit advice from designees of Indian Health Programs and Urban Indian Organizations prior to submission of a SPA likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations.

The issues to be considered at the hearing are:

- *Applicability:* Whether the statutory requirement in section 1902(a)(73)(A) of the Social Security Act (the Act) for solicitation of advice prior to the submission of a SPA that is likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations is applicable to this SPA when there are significant numbers of Indian beneficiaries who receive transportation services, and Indian Health Programs and Urban Indian Organizations that are transportation providers in the State.
- *Solicitation of Advice:* Whether Colorado met the statutory requirement at section 1902(a)(73)(A) to solicit advice when it did not include in any issuance to Indian health programs and Urban Indian Organizations prior to the submission of the SPA any specific solicitation of advice or comment on the SPA (or any description of a process for the submission of comments or initiation of a dialogue with the State).
- *Timing:* Whether Colorado met the statutory requirement at section 1902(a)(73)(A) to solicit advice when it issued general public notice on June 25, 2010, of the rate reductions that were to go into effect July 1, 2010, but did not issue notice to the Indian health programs or Urban Indian Organizations

until September 24, 2010, which was only 6 days prior to the date Colorado submitted the SPA to CMS. This issue is whether 6 days is a reasonable time period to allow for the submission and consideration of comments.

• *Sufficiency of Solicitation:* Whether Colorado met the statutory requirement at section 1902(a)(73) to solicit advice when the notice to the tribes did not describe the potential impact that the rate reduction for transportation would have on the tribes, Indians, Indian health providers, or urban Indian organizations.

Section 1116 of the Act and Federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Colorado announcing an administrative hearing to reconsider the disapproval of its SPAs reads as follows:

Ms. Laurel Karabotsos,
Acting Medical Director,
Department of Health Care Policy and Financing,
Medical & CHP+ Administration Office,
1570 Grant Street,
Denver, CO 80203–1818.

Dear Ms. Karabotsos:

I am responding to your request for reconsideration of Centers for Medicare & Medicaid Services' (CMS) decision to disapprove the Colorado State Plan Amendment (SPA) 10–034, which was submitted to CMS on September 30, 2010, and disapproved on March 10, 2011. The SPA proposed to revise the methods and standards for establishing payment rates for non-brokered and brokered non-emergency medical transportation. The disapproval was based on a finding that the State had not complied with the requirements of section 1902(a)(73)(A) of the Social Security Act to solicit advice from designees of Indian Health Programs and Urban Indian Organizations prior to submission of a SPA likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations.

The issues to be considered at the hearing are:

• Applicability: Whether the statutory requirement in section 1902(a)(73)(A) of the Social Security Act (the Act) for solicitation of advice prior to the submission of a SPA that is likely to have a direct effect on Indians, Indian Health Programs, or Urban Indian Organizations is applicable to this SPA when there are significant numbers of Indian beneficiaries who receive transportation services, and Indian Health Programs and Urban Indian Organizations that are transportation providers in the State.

• Solicitation of advice: Whether Colorado met the statutory requirement at section 1902(a)(73)(A) to solicit advice when it did not include in any issuance to Indian health programs and Urban Indian Organizations prior to the submission of the SPA any specific solicitation of advice or comment on the SPA (or any description of a process for the submission of comments or initiation of a dialogue with the State).

• Timing: Whether Colorado met the statutory requirement at section 1902(a)(73)(A) to solicit advice when it issued general public notice on June 25, 2010, of the rate reductions that were to go into effect July 1, 2010, but did not issue notice to the Indian health programs or Urban Indian Organizations until September 24, 2010, which was only 6 days prior to the date Colorado submitted the SPA to CMS. This issue is whether 6 days is a reasonable time period to allow for the submission and consideration of comments.

• *Sufficiency of Solicitation:* Whether Colorado met the statutory requirement at section 1902(a)(73) to solicit advice when the notice to the tribes did not describe the potential impact that the rate reduction for transportation would have on the tribes, Indians, Indian health providers, or urban Indian organizations.

I am scheduling a hearing on your request for reconsideration to be held on August 4, 2011, at the CMS Denver Regional Office, Colorado State Bank Building, 1600 Broadway, Suite 700, Denver, Colorado 80202–4367, in order to reconsider the decision to disapprove SPA 10–034.

If this date is not acceptable, CMS rules provide that the hearing date may be changed by written agreement between CMS and the State. The hearing will be governed by the procedures prescribed by Federal regulations at 42 CFR part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact the presiding officer at (410) 786–3169. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled, and to provide names of the individuals who will represent the State at the hearing.

Sincerely,

Donald M. Berwick, M.D.

Section 1116 of the Social Security Act (42 U.S.C. section 1316; 42 CFR section 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: June 8, 2011,

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–14674 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–5501–N2]

Medicare Program; Pioneer Accountable Care Organization Model; Extension of the Submission Deadlines for the Letters of Intent and Applications

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of extension of deadlines.

SUMMARY: This notice extends the deadlines for the submission of the Pioneer Accountable Care Organization Model letters of intent to June 30, 2011 and the applications to August 19, 2011.

DATES: *Letter of Intent Submission Deadline:* Interested organizations must submit a non-binding letter of intent by June 30, 2011 as described on the Innovation Center Web site at *http://innovations.cms.gov/areas-of-focus/seamless-and-coordinated-care-models/pioneer-aco.*

Application Submission Deadline: Applications must be postmarked on or before August 19, 2011. The Pioneer Accountable Care Organization Model

Application is available at: *http://innovations.cms.gov/areas-of-focus/seamless-and-coordinated-care-models/pioneer-aco-application/.*

ADDRESSES: Applications should be submitted by mail to the following address by the date specified in the **DATES** section of this notice:

Pioneer ACO Model, *Attention:* Maria Alexander, Center for Medicare and Medicaid Innovation, Centers for Medicare and Medicaid Services, Mail Stop S3–13–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Maria Alexander, (410) 786–4792.

SUPPLEMENTARY INFORMATION:

I. Background

We are committed to achieving the three-part aim of better health, better health care, and lower per-capita costs for Medicare, Medicaid, and Children's Health Insurance Program beneficiaries. One potential mechanism for achieving this goal is for CMS to partner with groups of health care providers of services and suppliers with a mechanism for shared governance that have formed an Accountable Care Organization (ACO) through which they work together to manage and coordinate care for a specified group of patients. We will pursue such partnerships through two complementary efforts, the Medicare Shared Savings Program, and initiatives undertaken by the Center for Medicare and Medicaid Innovation (Innovation Center).

The Pioneer ACO Model is an Innovation Center initiative targeted at organizations that can demonstrate the improvements in financial and clinical performance with respect to the care of Medicare beneficiaries that are possible in a mature ACO. To be eligible to participate in the Pioneer ACO Model, organizations would ideally already be coordinating care for a significant portion of patients under financial risk sharing contracts and be positioned to transform both their care and financial models from fee-for-service to a three-part aim, value based model.

On May 17, 2011, we posted a request for applications to participate in the Pioneer ACO Model on the Innovation Center Web site and we subsequently published a notice announcing the request for applications in the May 20, 2011 **Federal Register** (76 FR 29249). On the Innovation Center Web site, we specified that the submission deadline for the letter of intent was June 10, 2011 and that the application deadline was to be postmarked on or before July 18, 2011. For more details see the request for application which is available on the Innovation Center Web site at *http://innovations.cms.gov/areas-of-focus/seamless-and-coordinated-care-models/pioneer-aco.* However, in the May 20, 2011 notice, we specified that the submission deadlines were June 10, 2011 and not later than 5 p.m. on July 19, 2011, respectively. Therefore, in the June 8, 2011 **Federal Register** (76 FR 33306), we published a correction notice that corrected our error in the application submission deadline.

II. Provisions of the Notice

The Innovation Center is committed to working with stakeholders to develop initiatives to test innovative payment and service delivery models to reduce program expenditures while enhancing the quality of care available to beneficiaries. Being responsive to the suggestions of the stakeholder community is critical to the success of the Innovation Center's efforts to achieve the three-part aim of better healthcare, better health, and reduced costs through improvement. As part of this commitment, and based on the feedback from the community of potential applicants, the Innovation Center is extending the following deadlines relating to the Pioneer ACO Model: (1) The deadline for submission of the letter of intent has been extended to June 30, 2011; and (2) the deadline for the submission of the application has been extended to August 19, 2011. Therefore in the **DATES** section of this notice, we included the new submissions deadlines and in the **ADDRESSES** section we provide the address to which the applications must be mailed.

Authority: Section 1115A of the Social Security Act.

Dated: June 8, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–14678 Filed 6–9–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7031–NC3]

Proposed Establishment of a Federally Funded Research and Development Center—Third Notice

AGENCY: Centers for Medicare & Medicaid Services (CMS), Department of Health & Human Services (DHHS).

ACTION: Notice.

SUMMARY: This notice announces our intention to sponsor Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. This is the third of three notices which must be published over a 90-day period in order to advise the public of the agency's intention to sponsor an FFRDC.

DATES: We must receive comments on or before July 5, 2011.

ADDRESSES: Comments on this notice must be mailed to the Centers for Medicare & Medicaid Services, Candice Savoy, Contracting Officer, 7500 Security Boulevard, Mailstop C2–01–10, Baltimore, MD 21244 or e-mail at *Candice.Savoy@cms.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Candice Savoy, (410) 786–7494 or *Candice.Savoy@cms.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Centers for Medicare & Medicaid Services (CMS), an operating division within the Department of Health and Human Services (DHHS), intends to sponsor a Federally Funded Research and Development Center (FFRDC) to facilitate the modernization of business processes and supporting systems and their operations. Some of the broad task areas that will be utilized include strategic/tactical planning, conceptual planning, design and engineering, procurement assistance, organizational planning, research and development, continuous process improvement, Independent Verification and Validation (IV&V)/compliance, and security planning. Further analysis will consist of expert advice and guidance in the areas of program and project management focused on increasing the effectiveness and efficiency of strategic information management, prototyping, demonstrations, and technical activities. The FFRDC may also be utilized by non-sponsors, within DHHS.

The FFRDC will be established under the Federal Acquisition Regulations (48 CFR 35.017).

The FFRDC will be available to provide a wide range of support including, but not limited to:

- Strategic/tactical planning including assisting with planning for future CMS program policy, innovation, development, and support for Medicare and Medicaid.
- Conceptual planning including operations, analysis, requirements, procedures, and analytic support.
- Design and engineering including technical architecture direction.

• Procurement assistance, review/recommendations for current contract processes to include, contract reform, technical guidance, price and cost estimating, and source selection evaluation support.

• Organizational planning including functional and gap analysis.

• Research and development, assessment of new technologies and advice on medical and technical innovation and health information.

• Continuous process improvement, Investment Life Cycle (ILC)/current practices review and recommendations, implementation of best practices and code reviews.

• IV&V/Compliance, DUA surveillance and Web site content review.

• Security including Security Assessments and Security Test and Evaluations (ST&E). Identify, define, and resolve problems as an integral part of the sponsor's management team.

• Providing independent analysis about DHHS vulnerabilities and the effectiveness of systems deployed to make DHHS more effective in providing healthcare services and implementation of new healthcare initiatives.

• Providing intra-departmental and inter-agency cross-cutting, risk-informed analysis of alternative resource approaches.

• Developing and deploying analytical tools and techniques to evaluate system alternatives (for example, policy-operations-technology tradeoffs), and life-cycle costs that have broad application across CMS.

• Developing measurable performance metrics, models, and simulations for determining progress in securing DHHS data or other authorized data sources, (non-DHHS data sources, such as the census data or Department of Labor data, Veterans Administration, Department of Defense, data in developing performance metrics, and models).

• Providing independent and objective operational test and evaluation analysis support.

• Developing recommendations for guidance on the best practices for standards, particularly to improve the inter-operability of DHHS components.

• Assessing technologies and evaluating technology test-beds for accurate simulation of operational conditions and delivery system innovation models.

• Supporting critical thinking about the DHHS enterprise, business intelligence and analytic tools that can be applied consistently across DHHS and CMS programs.

• Supporting systems integration, data management, and data exchange that contribute to a larger DHHS intra and inter-agency enterprise as well as collaboration with States, local tribal governments, the business sector (for-profit and not-for-profits), academia and the public.

• Providing recommendations for standards for top-level DHHS systems requirements and performance metrics best practices for an integrated DHHS approach to systems solutions and structured and unstructured data architecture.

• Understanding key DHHS organizations and their specific role and major acquisition requirements and support them in the requirements development phase of the acquisition lifecycle.

• The FFRDC must function so effectively as to act as an agent for the sponsor in the design and pursuit of mission goals.

• The FFRDC must provide rapid responsiveness to changing requirements for personnel in all aspects of strategic, technical and program management.

• The FFRDC must recognize government objectives as its own objectives, partnering with the sponsor in pursuit of excellence in public service.

• The FFRDC must allow for non-sponsor (other than CMS) work for operating Divisions within DHHS.

We are publishing this notice in accordance with 48 CFR 5.205(b) of the FAR, to enable interested members of the public to provide comments on this proposed action. We note that this is the third of three notices issued under the FAR.

The Request for Proposal will be posted on FedBizOpps in the Summer of 2011. Alternatively, a copy can be received by contacting the person listed in the ''**FOR FURTHER INFORMATION CONTACT**'' section above.

Dated: June 8, 2011.

Donald M. Berwick,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–14706 Filed 6–13–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Voluntary Agencies Matching Grant Program.

OMB No.: New.

Description: The Voluntary Agencies Matching Grant Program was initiated in 1979 as an early employment alternative to public cash assistance. The goal of the Matching Grant Program is to assist individuals eligible for ORR funded services in attaining economic self-sufficiency within 120 to 180 days from their date of eligibility. Self-sufficiency must be achieved without accessing public cash assistance.

With the projected expansion of the Voluntary Agencies Matching Grant Program to 11 grantees in FY 2012, the Office of Refugee Resettlement (ORR) intends to seek approval from Office of Management and Budget (OMB) for information collection associated with the program. This includes a pre-award template for each local service provider site location and the data points the program currently collects.

The Local Service Provider Site Project Design template provides ORR with the information necessary to evaluate the appropriateness of the service delivery according to the capacity of the service provider to deliver required services and the potential of those enrolled in the program to achieve self-sufficiency. The collection instrument is a template composed of a ½ page table with contact and capacity data, a narrative of up to 2½ pages covering 11 elements related to capacity and service delivery, and a line-item budget. This form is required as part of the initial grant application and with each annual award renewal.

The Data points are aggregate measures for each site where Matching Grant Program services are provided. The data points will be collected using SF–PPR D. ORR has found these data points to be essential for evaluating grantee and program performance in meeting the requirements of both the Refugee Act and ORR regulations. Data points are recorded at enrollment and 120 days and/or 180 days from the point when the enrolled individual became eligible for the program. Data points include, eligible immigration status, employment eligibility and status, wage level, reasons for dropping out of the program (if applicable), and self-

sufficiency outcomes. Grantees report data points to ORR triennially (every four-months) and annually.

Respondents: Voluntary agencies that already provide Reception & Placement services through a cooperative agreement with the U.S. Department of State (DOS) or the U.S. Department of Homeland Security (DHS).

ANNUAL BURDEN ESTIMATES

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Local Service Provider Site Project Design Template	11	21.90	1	240.90
SF PPR D Spreadsheet	11	1	1.10	12.10

Estimated Total Annual Burden Hours: 253

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 Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@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 agency's 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.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2011–14584 Filed 6–13–11; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–D–0530]

Draft Guidance for Industry; Considering Whether an FDA-Regulated Product Involves the Application of Nanotechnology; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Considering Whether an FDA–Regulated Product Involves the Application of Nanotechnology''. This guidance is intended to provide industry with FDA's current thinking on whether FDA-regulated products contain nanomaterials or otherwise involve the application of nanotechnology. The points to consider are intended to be broadly applicable to all FDA-regulated products, with the understanding that additional guidance may be articulated for specific product areas, as appropriate in the future.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 15, 2011.

ADDRESSES: Submit written requests for single copies of the guidance to the Office of Policy, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit electronic comments on the draft guidance to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Office of Policy, Office of the Commissioner,Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4236, Silver Spring, MD 20993–0002, 301–796–4830, *e-mail: Ritu.Nalubola@fda.hhs.gov;* or Carlos Peña, Office of the Chief Scientist, Office of the Commissioner, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4264, Silver Spring, MD 20993–0002, 301–796–4880, *e-mail: Carlos.Pena@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Considering Whether an FDA-Regulated Product Involves the Application of Nanotechnology''. The guidance is intended for manufacturers, suppliers, importers, and other stakeholders. The guidance describes FDA's current thinking on whether FDA-regulated products contain nanomaterials or otherwise involve the application of nanotechnology. As a first step toward developing FDA's framework for considering whether FDA-regulated products include nanomaterials or otherwise involve nanotechnology, the Agency has developed the points discussed in the guidance. These points to consider are intended to be broadly applicable to all FDA-regulated products, with the understanding that additional guidance may be articulated for specific product areas, as appropriate in the future. The guidance document does not establish any regulatory definitions. Rather, it is intended to help industry and others identify when they should consider potential implications for regulatory status, safety, effectiveness, or public health impact that may arise with the application of nanotechnology in FDA-regulated products. Public input on the

guidance may also inform the development of any future actions, as needed.

II. Significance of Guidance

This level 1 draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the Agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) either electronic or written comments regarding this document. It is only necessary to send one set of comments. It is no longer necessary to send two copies of mailed comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/RegulatoryInformation/Guidances/ucm257698.htm* or *http://www.regulations.gov.*

Dated: June 2, 2011.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2011–14643 Filed 6–13–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders K.

Date: June 23–24, 2011.

Time: 8 a.m. to 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: Shanta Rajaram, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–435–6033, *rajarams@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14718 Filed 6–13–11; 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, Radiation Therapy and Biology SBIR/STTR.

Date: July 11, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, *hongb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Vascular Hematology.

Date: July 11–12, 2011.

Time: 1 p.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: Anshumali Chaudhari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: July 12, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Seattle, 1900 5th Avenue, Seattle, WA 98101.

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, RFA Panel: Indo-US Program on Reproductive Health.

Date: July 13, 2011.

Time: 8 a.m. to 12 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: Gary Hunnicutt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, 301–435–0229, *gary.hunnicutt@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel. Fellowship: Chemical and Bioanalytical Sciences,

Date: July 13, 2011.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Sergei Ruvinov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1180, *ruvinser@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Skeletal Muscle and Exercise Physiology.

Date: July 13, 2011.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Ingraham, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, RFA Panel: Indo-US Program on Reproductive Health.

Date: July 13, 2011.

Time: 12:30 p.m. to 6 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: Dianne Hardy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@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: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14716 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, NIH Pathway to Independence (PI) Award.

Date: July 12, 2011.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Megan Libbey, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9609, Rockville, MD 20852–9609, 301–402–6807, *libbeym@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Fellowships and Dissertation Grants.

Date: July 20, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David W. Miller, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14714 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, National Cooperative Drug Discovery and Development Group.

Date: June 29, 2011.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606, *charlesvi@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Conflicts and Eating Disorders 2011.

Date: July 7, 2011.

Time: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *bollerf@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14712 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, NIDDK Telephone SEP.

Date: July 8, 2011.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Teen-LABS.

Date: July 15, 2011.

Time: 2 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul A. Rushing, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes Of Health, Room 747, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Islet Autoantibodies Ancillary Studies.

Date: July 15, 2011.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, GUDMAP Project Cooperative Grants.

Date: July 25, 2011.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14695 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 16, 2011, 2 p.m. to June 16, 2011, 4 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 2, 2011, 76 FR 31966–31967.

The meeting will be held June 28, 2011. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14694 Filed 6–13–11; 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 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: Center for Scientific Review Special Emphasis Panel, Mutation Rate and Genomic Variation,

Date: June 20, 2011.

Time: 11 a.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: David J Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@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.

(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: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14693 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of NIAAA Member Conflict Applications.

Date: July 19, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A. Rippe, PhD, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS.)

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14692 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of NIAAA Member Conflict Applications.

Date: July 14, 2011.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard A. Rippe, PhD, National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, Room 2109, Rockville, MD 20852, 301–443–8599, *rippera@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS.)

Dated: June 7, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy

[FR Doc. 2011–14691 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Center for Scientific Review Special Emphasis Panel, June 28, 2011, 8 a.m. to June 29, 2011, 3 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 23, 2011, 76 FR 29770–29771.

The meeting is cancelled due to the reassignment of the applications.

Dated: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14690 Filed 6–13–11; 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 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: Center for Scientific Review Special Emphasis Panel Member Conflict: Chronic Diseases

Date: June 28–29, 2011

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Valerie Durrant, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892, (301) 827–6390, *durrantv@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: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14689 Filed 6–13–11; 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, CounterAct—Countermeasures Against Chemical Threats.

Date: July 14, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Donovan House, 1155 14th Street, NW., Washington, DC 20005.

Contact Person: Geoffrey G Schofield, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowships: Reproductive Sciences and Development.

Date: July 14, 2011.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Dianne Hardy, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6175, MSC 7892, Bethesda, MD 20892, 301–435–1154, *dianne.hardy@nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Science Approaches to Preventing HIV/AIDS Study Section.

Date: July 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Seattle Hotel, 1900 5th Avenue, Seattle, WA 98101.

Contact Person: Jose H Guerrier, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–435–1137, *guerriej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Genes, Genomes, and Genetics.

Date: July 14–15, 2011.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: Michael A Marino, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Respiratory Sciences.

Date: July 14–15, 2011.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Ghenima Dirami, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 301–594–1321, *diramig@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: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14688 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; 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 on Aging Special Emphasis Panel, Skeletal Indicators, Health and Aging.

Date: July 7, 2011.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building Rm. 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–7703, *ferrellrj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS.)

Dated: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14687 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Frontotemporal Dementia.

Date: July 26, 2011.

Time: 12 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel, Antecedent Biomarkers For AD.

Date: July 28, 2011.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William Cruce, PhD, Scientific Review Officer, National Institute on Aging, Scientific Review Branch, Gateway Building 2C–212, 7201 Wisconsin Ave., Bethesda, MD 20814, 301–402–7704, *crucew@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 8, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–14685 Filed 6–13–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2009–0026]

Chemical Facility Anti-Terrorism Standards Personnel Surety Program

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Response to comments received during 30-day comment period: New information collection request 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS or the Department), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Infrastructure Security Compliance

Division (ISCD) has submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is a new information collection. A 60-day public notice for comments was previously published in the **Federal Register** on June 10, 2009, at 74 FR 27555. A 30-day public notice for comments was published in the **Federal Register** on April 13, 2010, at 75 FR 18850. In the 30-day notice the Department responded to comments received during the 60-day comment period. This notice responds to comments received during the 30-day notice. This process is conducted in accordance with 5 CFR 1320.8.

FOR FURTHER INFORMATION: A copy of the ICR, with applicable supporting documentation, may be obtained through the Federal Rulemaking Portal at *http://www.regulations.gov.*

SUPPLEMENTARY INFORMATION

Program Description

The Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR Part 27, require high-risk chemical facilities to submit information to the Federal government about facility personnel and, as appropriate, unescorted visitors with access to restricted areas or critical assets at those facilities. As part of the CFATS Personnel Surety Program this information will be vetted by the Federal government against the Terrorist Screening Database (TSDB) to identify known or suspected terrorists (KSTs). The TSDB is the Federal government's consolidated and integrated terrorist watchlist of known and suspected terrorists, maintained by the Department of Justice (DOJ) Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC). For more information on the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

High-risk chemical facilities must also perform three other types of background checks in order to comply with CFATS' Personnel Surety Risk-Based Performance Standard 12 (RBPS–12). *See* 6 CFR 27.230(a)(12)(i)–(iii): High-risk chemical facilities must ''perform appropriate background checks * * * including (i) Measures designed to verify and validate identity; (ii) Measures designed to check criminal history; [and] (iii) Measures designed to verify and validate legal authorization to work.'' These three other types of background checks are not the subjects of this notice, nor are they subjects of the underlying ICR or of the 30- or 60-day notices preceding this notice. The CFATS Personnel Surety Program is not intended to halt, hinder, or replace these three other types of background checks, nor is it intended to halt, hinder, or replace high-risk chemical facilities' performance of background checks which are currently required for employment or access to secure areas of those facilities.

Background

On October 4, 2006, the President signed the DHS Appropriations Act of 2007 (the Act), Public Law 109–295. Section 550 of the Act (Section 550) provides DHS with the authority to regulate the security of high-risk chemical facilities. DHS has promulgated regulations implementing Section 550, the Chemical Facility Anti-Terrorism Standards, 6 CFR Part 27.

Section 550 requires that DHS establish Risk Based Performance Standards (RBPS) as part of CFATS. RBPS–12 (6 CFR 27.230(a)(12)(iv)) requires that regulated chemical facilities implement ''measures designed to identify people with terrorist ties.'' The ability to identify individuals with terrorist ties is an inherently governmental function and requires the use of information held in government-maintained databases, which are unavailable to high-risk chemical facilities. Therefore, DHS is implementing the CFATS Personnel Surety Program, which will allow chemical facilities to comply with RBPS–12 by implementing ''measures designed to identify people with terrorist ties.''

DHS has submitted the proposed information collection for the CFATS Personnel Surety Program to OMB for review and clearance in accordance with the Paperwork Reduction Act of 1995.

Overview of CFATS Personnel Surety Process

The CFATS Personnel Surety Program will work with the DHS Transportation Security Administration (TSA) to identify individuals who have terrorist ties by vetting information submitted by each high-risk chemical facility against the TSDB.

High-risk chemical facilities or their designees will submit the information of: (1) Facility personnel who have or are seeking access, either unescorted or otherwise, to restricted areas or critical assets; and (2) unescorted visitors who have or are seeking access to restricted areas or critical assets. These persons, about whom high-risk chemical facilities and facilities' designees will submit information to DHS, are referred to in this notice as ''affected individuals.'' [1]

Information will be submitted to NPPD through the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS. The high-risk chemical facility or its designees will submit the information of affected individuals to DHS through CSAT. The submitters of this information (''Submitters'') for each high-risk chemical facility will also affirm, to the best of their knowledge, that the information is: (1) True, correct, and complete; and (2) collected and submitted in compliance with the facility's Site Security Plan (SSP) or Alternative Security Program (ASP), as reviewed and authorized and/or approved in accordance with 6 CFR 27.245. The Submitter(s) of each high-risk chemical facility will also affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974, 5 U.S.C. 552a, has been given to affected individuals before their information is submitted to DHS.

DHS will send a verification of receipt (previously referred to as a ''verification of submission'' in the 60-day and 30-day notices) to the submitter(s) of each high-risk chemical facility when a high-risk chemical facility: (1) Submits information about an affected individual for the first time; (2) submits additional, updated, or corrected information about an affected individual; and/or (3) notifies DHS that an affected individual no longer has or is seeking access to that facility's restricted areas or critical assets.

Upon receipt of each affected individual's information in CSAT, NPPD will send a copy of the information to TSA. Within TSA, the Office of Transportation Threat Assessment and Credentialing (TTAC) conducts vetting against the TSDB for several DHS programs. TTAC will compare the information of affected individuals collected by DHS (via CSAT) to information in the TSDB. TTAC will forward potential matches to the TSC, which will make a final determination of whether an individual's information is identified as a match to a record in the TSDB.

In the event that an affected individual's information is confirmed to match a record in the TSDB (which DHS refers to as a ''match to the TSDB,'' or

[1] Individual high-risk facilities may classify particular contractors or categories of contractors either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices.

simply as a ''match''), the TSC will notify NPPD and the appropriate Federal law enforcement agency for coordination, investigative action, and/or response, as appropriate. NPPD will not routinely provide vetting results to high-risk chemical facilities nor will it provide results to an affected individual whose information has been submitted by a high-risk chemical facility. As warranted, high-risk chemical facilities may be contacted by DHS or Federal law enforcement agencies as part of law enforcement investigation activity.

Information Collected

DHS may collect the following information about affected individuals:

- Full name;
- Aliases;
- Date of birth;
- Place of birth;
- Gender;
- Citizenship;
- Passport information;
- Visa information;
- Alien registration number;
- DHS Redress Number (if available).

For purposes of clarifying the exact data points which will be routinely collected as part of the CFATS Personnel Surety Program, the Department offers the following data clarification to the public. Under this information collection, the Department will require that high-risk chemical facilities submit the following information about affected individuals that are U.S. Citizens and Lawful Permanent Residents, for vetting against the TSDB:

a. Full name;
b. Date of birth; and
c. Citizenship or Gender.

The Department will require that high-risk chemical facilities submit the following information about affected individuals that are Non-U.S. Persons, for vetting against the TSDB:

a. Full name;
b. Date of birth;
c. Citizenship; and
d. Passport information and/or alien registration number.

To reduce the likelihood of false positives in matching against the TSDB, high-risk chemical facilities may also (optionally) submit the following information about affected individuals:

a. Aliases;
b. Gender (for Non-U.S. persons);
c. Place of birth; and
d. DHS Redress Number.

In lieu of conducting new TSDB vetting of an affected individual, DHS may collect information to verify that an affected individual is currently enrolled in a DHS program that also requires a TSDB check equivalent to the TSDB vetting performed as part of the CFATS Personnel Surety Program. For purposes of clarifying the exact data points which will be routinely collected as part of the CFATS Personnel Surety Program, the Department offers the following data clarification to the public. To verify enrollment in a DHS screening program, the high-risk chemical facility must submit the affected individual's:

a. Full Name;
b. Date of Birth; and
c. Program-specific information or credential information, such as unique number, or issuing entity (*e.g.,* State for Commercial Driver's License with an Hazardous Materials Endorsement).

When verifying enrollment in a DHS screening program, the high-risk chemical facility may also (optionally) submit the affected individual's:

a. Aliases;
b. Place of birth;
c. Gender;
d. Citizenship; and
e. DHS Redress Number.

If high-risk chemical facilities find it administratively easier to submit to DHS the routine vetting information of an affected individual, even if the affected individual has been previously vetted, facilities may do so. In that case, DHS will vet affected individuals against the TSDB, and will not seek to verify an affected individual's enrollment in TWIC, HME, NEXUS, SENTRI or FAST.

DHS will collect information that identifies the high-risk chemical facility or facilities, to which the affected individual has or is seeking access to restricted areas or critical assets.

DHS may contact a high-risk chemical facility to request additional information (*e.g.,* visa information) pertaining to particular individuals in order to clarify suspected data errors or resolve potential matches (*e.g.,* in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate, that an individual's information has been confirmed as a match to a TSDB record.

In the event that a confirmed match is identified as part of the CFATS Personnel Surety Program, DHS may obtain references to and/or information from other government law enforcement and intelligence databases, or other relevant databases that may contain terrorism information.

DHS may collect information necessary to assist in tracking submissions and transmission of records, including electronic verification that DHS has received a particular record.

DHS may also collect information about points of contact at each high-risk chemical facility, and which points of contact the Department or Federal law enforcement personnel may contact with follow-up questions. A request for additional information from DHS does not imply, and should not be construed to indicate, that an individual is known or suspected to be associated with terrorism.

DHS may also collect information provided by individuals or high-risk chemical facilities in support of any redress requests or any adjudications initiated under CFATS.

DHS may request information pertaining to affected individuals, previously provided to DHS by high-risk chemical facilities, in order to confirm the accuracy of that information, or to conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program.

DHS will also collect administrative or programmatic information (*e.g.,* affirmations or certifications of compliance, extension requests, brief surveys for process improvement, etc.) necessary to manage the CFATS Personnel Surety Program.

The Department will also collect information that will allow high-risk chemical facilities to manage their data submissions. Specifically, the Department will make available to high-risk chemical facilities two blank data fields. These blank data fields may be used by a high-risk chemical facility to assign each record of an affected individual a unique designation or number that is meaningful to the high-risk chemical facility. Collecting this information will enable a high-risk chemical facility to manage the electronic records it submits into CSAT. Entering this information into CSAT will be completely voluntary, and is intended solely to enable high-risk chemical facilities to search through, sort, and manage the electronic records they submit into.

Responses to Comments Received During the CFATS Personnel Surety Program ICR 30-Day Comment Period

The Department received 20 comments in response to the 30-day notice for comment. Comments were received from eight private sector companies; nine associations; one training council; one union; and one council composed of chemical industry trade associations. Many of the comments were in response to the questions posed by the Department in the 30-day notice for comments. The Department first addresses comments responding to questions posed in the 30-day notice, and then responds to

unsolicited comments received in response to the 30-day notice.

(A) On Behalf of OMB, DHS Solicited Comments That 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

Comment: The Department received several comments addressing whether the proposed collection of information had any practical utility. One commenter suggested that the CFATS Personnel Surety Program does not provide owners or operators of regulated facilities with a value-added tool to screen potential personnel, contractors, and visitors or to identify potential security risks. Another commenter suggested that the proposed program is a one-way process that provides information to the Department on personnel with access to restricted areas, without any feedback provided to the owners or operators of regulated facilities on their personnel. In contrast, one commenter stated that, ''[i]n the context of CFATS requirements for personal surety and protecting the nation's chemical infrastructure, the consolidated and integrated terrorist watchlist, even with [its] limitations * * * is likely the best check for potential terrorists by DHS compared to other methods and information.''

Response: The CFATS Personnel Surety Program is necessary for the proper performance of the functions of the Department, including protecting chemical facilities and the nation from terrorist attacks. DHS will perform this responsibility by identifying individuals with terrorist ties that have or are seeking access to restricted areas or critical assets at high-risk chemical facilities. The CFATS Personnel Surety Program also has practical utility—enabling the Federal government to take appropriate follow-up action if it determines that known or suspected terrorists have or seek access to restricted areas or critical assets at high-risk chemical facilities.

Comment: One commenter stated that the information collection and vetting processes described in the 30-day notice appeared to be an attempt to shift responsibility from the government to the private sector. The commenter suggested that the 30-day notice read as though facilities will assist the Federal government in the performance of anti-terrorism duties.

Response: High-risk chemical facilities will submit information pertaining to affected individuals to DHS as part of the CFATS Personnel Surety Program. In the preamble to the CFATS Interim Final Rule (IFR), DHS stated that background checks identifying individuals with terrorist ties, required by 6 CFR 27.230(a)(12)(iv), can only be achieved by conducting vetting against the TSDB. *See* 72 FR 17709 (Apr. 9, 2007). Determining whether individuals' information matches a record in the TSDB necessarily includes checks of data sets that are not commercially available. The design of the CFATS Personnel Surety Program will allow high-risk chemical facilities to comply with 6 CFR 27.230(a)(12)(iv) by submitting information necessary for DHS to conduct vetting against the TSDB.

Comment: DHS received comments regarding individuals who have previously undergone TSDB vetting equivalent to CFATS Personnel Surety Program TSDB vetting, and who have been subsequently issued and currently maintain active, valid credentials or endorsements (*e.g.,* Transportation Worker Identification Credentials) as a result of that previous vetting. Commenters stated that the Department's collection of information from facilities about these affected individuals: (1) Serves no security purpose; (2) means that the Department is not granting TSDB vetting reciprocity between its own programs; and (3) is redundant, particularly in situations where commenters believe that other DHS credentialing programs have more stringent vetting criteria than CFATS. Several commenters requested clarification on which Federal credentialing programs the Department will recognize as conducting TSDB checks equivalent to CFATS Personnel Surety Program TSDB checks.

Response: The 30-day notice reiterated the Department's position, first outlined in the preamble to the IFR, that DHS supports the sharing and reuse of vetting results. *See* 72 FR 17709 (Apr. 9, 2007). An affected individual will not need to undergo additional vetting as part of the CFATS Personnel Surety Program if he/she has successfully undergone TSDB vetting, and possesses a valid credential or endorsement, as part of the Department's Transportation Worker Identification Credential (TWIC) program, Hazardous Materials Endorsement (HME) program, NEXUS program, Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program, or Free and Secure Trade (FAST) program. DHS must collect a limited amount of information for that affected individual, however, to determine that the affected individual is currently enrolled in an above-listed DHS program. This information is necessary (1) To verify that the affected individual is currently enrolled in the DHS program, and (2) to enable DHS to access both the original enrollment data and the TSDB vetting results already in the possession of the Department, when necessary. The following information is necessary to verify an affected individual's enrollment in a DHS program:

	TWIC	HME	NEXUS	SENTRI	FAST
Name	Required	Required	Required	Required	Required.
Date of Birth	Required	Required	Required	Required	Required.
Unique Credential Information.	—TWIC Serial Number: Required. —Expiration Date: Required.	—Commercial Driver's License (CDL) Issuing State(s): Required. —CDL Number: Required. —Expiration Date: Required.	—PASS Number: Required. —Expiration Date: Required.	—PASS Number: Required. —Expiration Date: Required.	—PASS Number: Required. —Expiration Date: Required.

If DHS cannot confirm an affected individual's current enrollment in one of the previously mentioned programs, or if previous vetting results cannot be verified, DHS will either: (1) Notify the high-risk chemical facility that the Department could not verify that the affected individual is currently enrolled in a DHS program; and/or (2) vet the affected individual against the TSDB. When a high-risk chemical facility is notified that the Department could not

verify that the affected individual is currently enrolled in a DHS program, the high-risk chemical facility must either: (1) Submit additional information, which corrects or updates the previous information to verify enrollment; or (2) provide sufficient information for the Department to conduct vetting of the affected individual against the TSDB. Such notifications from DHS will not imply, and should not be construed to indicate, that an individual has been confirmed as a match to the TSDB.

If high-risk chemical facilities find it administratively easier to submit information about affected individuals for vetting against the TSDB (rather than leveraging previous vetting against the TSDB), high-risk chemical facilities may do so. In that case, DHS will vet affected individuals against the TSDB, and will not seek to verify an affected individual's enrollment in TWIC, HME, NEXUS, SENTRI, or FAST.

Comment: Several commenters suggested that the Department was not following recently-issued White House recommendations to promote comparability and reciprocity across credentialing and screening programs. One commenter specifically referred to Recommendation 16 of the Surface Transportation Security Priority Assessment, which recommends that the Federal government ''Create a more efficient Federal credentialing system by reducing credentialing redundancy, leveraging existing investments, and implementing the principle of 'enroll once, use many' to reuse the information of individuals applying for multiple access privileges.'' *See* The White House (March 2010), *http://www.whitehouse.gov/sites/default/files/rss_viewer/STSA.pdf.*

Response: The design of the CFATS Personnel Surety Program aligns with the recommendations of the Surface Transportation Security Priority Assessment.

In discussions with high-risk chemical facilities, DHS has discovered that the concept of ''enroll once, use many'' may have been misinterpreted by commenters as meaning that an individual should only need to submit information to DHS once, and that DHS should never collect information from that individual again. DHS, however, defines the ''enroll once, use many'' concept as the ability to reuse previously-submitted program enrollment information and/or vetting results, upon collection of sufficient information to confirm an individual's prior enrollment in a DHS program or prior vetting results. High-risk chemical facilities will have to submit affected individuals' personal data to DHS as part of the CFATS Personnel Surety Program in order for DHS to reuse previously-submitted enrollment information and previous vetting results. The CFATS Personnel Surety Program will require only the minimum information necessary to verify affected individuals' enrollments in the TWIC, HME, NEXUS, SENTRI, and FAST programs.

Comment: Several commenters suggested that it may be reasonable for DHS to require chemical facilities to perform visual inspections of TWICs and other existing credentials, but that requiring chemical facilities to submit data pertaining to affected individuals possessing such other credentials would not serve any legitimate security purpose. Further, one commenter stated that facilities not regulated under the Maritime Transportation Security Act (MTSA) should not be expected to obtain ''readers'' for TWIC credentials.

Response: As previously discussed, DHS will collect information about affected individuals who are currently enrolled in certain DHS programs with equivalent TSDB vetting to verify that each affected individual is currently enrolled in the TWIC, HME, NEXUS, SENTRI, and/or FAST programs.

DHS agrees that there is no expectation or requirement that non-MTSA facilities be equipped with TWIC readers. DHS also emphasizes that TWICs are not required for persons accessing facilities regulated by CFATS. High-risk chemical facilities may, however, choose to leverage TWIC credentials as part of the identity, legal authorization to work, and criminal history background checks they perform as part of 6 CFR 27.230(a)(12)(i)–(iii). The precise manners in which high-risk chemical facilities could leverage TWIC credentials as part of identity, legal authorization to work, and criminal history background checks could vary from facility to facility, and should be described in individual facilities' SSPs. The precise manners in which facilities could leverage TWIC credentials as part of these other background checks are beyond the scope of this Paperwork Reduction Act response to comments.

Comment: Several commenters suggested that the Department should accept vetting results from other Federal agencies, namely the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), which conduct vetting against the TSDB. Commenters suggested that without this accommodation, the Department would impose unreasonable burdens on a segment of the community regulated by more than one Federal agency without any corollary enhancement to security.

Response: ATF conducts point-in-time vetting against the TSDB, which means that ATF's checks are conducted at only specified times, not on a recurrent basis. Recurrent vetting is a DHS best practice, and compares an affected individual's information against new and/or updated TSDB records as new and/or updated records become available.

(B) On Behalf of OMB, DHS Solicited Comments Which Evaluate the Accuracy of the Department's Estimate of the Burden of the Proposed Collection of Information, Including the Validity of the Methodology and Assumptions Used

Comment: The Department received comments which supported the proposed CFATS Personnel Surety Program information submission schedule, published in the **Federal Register** on April 13, 2010, at 75 FR 18853, as part of the Department's 30-day notice. The Department also received comments raising the point that the proposed schedule would create situations in which an affected individual's name will be submitted to DHS after he/she no longer has access to a high-risk chemical facility. Several commenters highlighted this issue by pointing out that commercial delivery companies may not always send the same driver to a high-risk chemical facility.

Response: Based in part on commenters' concerns, DHS will revise the proposed information submission schedule previously published in the 30-day notice. The revised schedule will be published in the **Federal Register** and/or disseminated to high-risk chemical facilities individually, and will align with the RBPS Metric 12.1 for ''new/prospective employees [facility personnel] & unescorted visitors.'' (See Table 17 in the May 2009 Risk Based Performance Standards Guidance, *http://www.dhs.gov/xlibrary/assets/chemsec_cfats_riskbased_performance_standards.pdf.*) Specifically, the revised schedule will require high-risk chemical facilities to submit the information of new affected individuals prior to access to restricted areas or critical assets. The Department is considering whether to establish that high-risk chemical facilities be required to submit the information at least 48 hours prior to access to restricted areas or critical assets. The Department may, on a case by case basis, allow for variances from the schedule.

In response to the comments received about commercial delivery drivers, DHS reminds the public that RBPS–12

applies only to facility personnel with access to a high-risk chemical facility's restricted areas or critical assets, and to unescorted visitors with access to a high-risk chemical facility's restricted areas or critical assets. Situations that require visitors to generally access a high-risk chemical facility will not result in submission of information for vetting under the CFATS Personnel Surety Program if the visitors do not have access to restricted areas or critical assets, or if the visitors are escorted through restricted areas and critical assets. If commercial delivery drivers visiting high-risk chemical facilities are escorted, or if they do not have access to restricted areas or critical assets in the first place, then they will not be affected individuals and will not be vetted under the CFATS Personnel Surety Program.

If a high-risk chemical facility opts to allow visitors (*e.g.,* commercial truck drivers) unescorted access to its restricted areas or critical assets, the visitors will be considered affected individuals and the facility will be required to both (1) Perform background checks on the unescorted visitors as required under 6 CFR 27.230(a)(12)(i)–(iii), and (2) submit information pertaining to those visitors to the Department to identify individuals with terrorist ties. The Department recognizes that this may, or may not, necessitate changes in business operations of high-risk chemical facilities.

Comment: Many commenters suggested the Department did not accurately estimate the burden to high-risk chemical facilities because it underestimated the affected population. The commenters suggested a total population of 10,000,000 affected individuals, rather than the Department's estimate of 1,063,200 affected individuals. Using the Department's estimated time per respondent of 0.59 hours, commenters estimated 6,000,000 burden hours. The majority of commenters used an average hourly rate of $20.00. Commenters estimated that total annual cost of the CFATS Personnel Surety Program would be $120,000,000.

Response: DHS disagrees with several of the commenters' assumptions that resulted in the $120,000,000 estimate. First, commenters suggested that the ICR estimate of 1,063,200 total respondents (*i.e.,* affected individuals) did not account for agricultural retail or distribution facilities that cannot isolate restricted areas or critical assets to a limited number of employees or visitors. In the CFATS Regulatory Assessment the Department approximated compliance costs through the use of model facility categories. *See* CFATS Regulatory Assessment, section 5.1 (Apr. 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.* Model facility categories were created using four variables: (1) To which of the four risk-based tiers a covered facility is assigned; (2) whether a covered facility is ''enclosed'' (inside a building) or ''open'' (not inside a building); (3) the size of a covered facility (large or small); and (4) whether the chemicals at a covered facility are at risk of theft or diversion for subsequent use as weapons or weapons components. These variables provided the Department with 16 variations for which different estimates could be approximated. *See* CFATS Regulatory Assessment at 23, table 15 (Apr. 1, 2007). Several of the variations of these model facility categories, notably Tier 4 Groups A, B, and C, do account for agricultural retail or distribution facilities that cannot isolate restricted areas or critical assets to a limited number of employees or visitors. Therefore, the Department believes that the information collection does reasonably account for agricultural retail or distribution facilities that cannot isolate restricted areas or critical assets to a limited number of facility personnel or unescorted visitors.

Second, some commenters assumed that the Department failed to account for respondents at facilities that would be required to submit Top-Screen consequence assessments to DHS if the ''indefinite time extension'' issued by the Department on January 9, 2008 is lifted. The Department disagrees with the commenters because the total respondent estimate used by the Department was derived from the CFATS Regulatory Assessment, which was published (on April 1, 2007) prior to the ''indefinite time extension'' (issued on January 9, 2008). The CFATS Regulatory Assessment assumed the inclusion of these facilities when estimating the population of individuals affected by Personnel Surety costs.

The third assumption that commenters used to support an estimated total number of 10,000,000 affected individuals was that the Department should include the population of individuals working at approximately 3,200 MTSA-regulated facilities in its estimate of the population of affected individuals. The Department is precluded from including any population in the total number of respondents explicitly excluded from regulation under CFATS. MTSA facilities are excluded from regulation under CFATS by Section 550.

Commenters also suggested that many high-risk facilities in the retail segment could see large numbers of visitors (*i.e.,* customers) entering facilities during peak retail times of the year. The commenters suggested that depending on how the Department defines ''unescorted visitor,'' the total annual number of respondents could be an order of magnitude greater than the 354,400 figure estimated by the agency. Commenters did not specify any order of magnitude, so the Department assumed that commenters were suggesting that during peak times of the year the Department should estimate an increase of one order of magnitude (*i.e.,* 3,189,600 affected individuals) above the Department's current annual population estimate.[2] The Department does not believe that high-risk chemical facilities in the retail segment will opt to conduct the other background checks required under 6 CFR 27.230(a)12(i)–(iii) on these individuals due to the cost and burden that would place on the high-risk chemical facility. Hence, high-risk chemical facilities in the retail segment will likely ensure, through their access controls, that customers will not become affected individuals. Therefore, the Department has chosen not to modify the total number of respondents based upon peak retail times of the year.

The Department has concluded that the comments which estimated that the total annual cost on the regulated community of the CFATS Personnel Surety Program would be $120,000,000 were based on inaccurate assumptions.

Comment: One commenter stated that it conducted a study of twelve industry members and subsequently concluded the Department had significantly underestimated the burden on the industry.

Response: The Department requested from the commenter, and was subsequently provided, the survey data underlying the study referenced in the commenter's response. The survey requested information and specific numeric data from 34 facilities (owned and operated by 12 industry members). The facilities ranged from a small research facility to several large facilities. The Department concluded that an increase in the estimated number of respondents was justified, based on the survey data received.

The Department has concluded that the type of facilities surveyed generally aligned with Group A facilities (described in section 5.1 of the CFATS

[2] The estimate of 3,189,600 affected individuals is derived from [(354,000 affected individuals x 10)—354,400 affected individuals]

Regulatory Assessment). Based on the survey, and based on a brief description of facilities responding to the survey, the Department increased, for the purposes of this ICR, the estimate of Group A facilities by an order of magnitude thus matching the results of the survey.

In reviewing the comments, as well as the survey data provided, the Department identified a minor computational error when calculating the total annual number of respondents in the 60-day and 30-day notices. Specifically, the Department in the 30-day and 60-day notices improperly assumed that total number of respondents as 1,063,200 affected individuals over a three-year period. Rather in the CFATS Regulatory Assessment the Department had assumed the total population of individuals to be screened at 1,063,200 with an additional annual turnover that resulted in an additional 177,290 respondents during the second and third years. Therefore, in the 60-day and 30-day notices the Department should have estimated a total number of respondents over three years as 1,417,780 resulting in 472,593 annual number of respondents.

In accounting for this minor computational error, and for the increase of Group A facilities by an order of magnitude, the Department has revised its average total annual number of respondents from 354,400 to 1,303,700. As a consequence, the estimated time per respondent (*i.e.,* total burden hours/number of respondents) was revised from 0.59 hours to 0.54 hours.

Comment: Three of the four commenters that analyzed the estimated costs outlined in the 30-day notice suggested an appropriate wage rate of $20 per hour while the fourth commenter suggested the wage rate would range between $20 and $40 per hour.

Response: Based upon the commenters' suggestions, the Department has modified the wage rate. Since comments on the appropriate wage rate ranged from $20 to $40 per hour, we picked the midpoint of $30 for our hourly wage rate. To account for the cost of employee benefits such as paid leave, insurance, retirement, etc., we multiplied the base wage rate of $30 by 1.4 to arrive at a fully loaded wage rate of $42 per hour.[3] The updated analysis and costs submitted to OMB as part of the CFATS Personnel Surety Program ICR are reflected at the conclusion of this notice.

Comment: Many commenters suggested that the Department did not accurately estimate the burden because the estimate was limited to those activities listed in 5 CFR 1320.3(b)(1). Commenters suggested that such a limit does not account for unnecessary investigations, or for justified or unjustified adverse employment decisions that could result from a person's possibly unjustified presence on the TSDB. One commenter expressed concern that the Department's estimate did not account for the burden on affected individuals whose information matches that of records in the TSDB, but who are not in fact terrorists.

Response: The activities which the Department must account for when estimating the burden of an ICR are limited in scope to those activities listed in 5 CFR 1320.3(b)(1). Specifically, 5 CFR 1320.3(b)(1) requires the Department to estimate the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. The potential burden described by the commenters is not related to the burden high-risk chemical facilities incur in collecting and submitting the information of affected individuals to DHS, nor is it within the scope of the activities listed in 5 CFR 1320.3(b)(1).

(C) On Behalf of OMB, DHS Solicited Comments To Enhance the Quality, Utility, and Clarity of the Information To Be Collected

Comment: One commenter suggested that requiring covered facilities to collect, submit and maintain affected individuals' information creates a situation subject to data entry errors and presents a significant challenge to maintain current information.

Response: The Department has made an effort to create a user-friendly Web tool (in CSAT) that will reduce data entry errors. Hence, the Department believes that Submitters of high-risk chemical facilities will be able to affirm that, to the best of their knowledge, information submitted to DHS as part of the CFATS Personnel Surety Program is true, correct, and complete.

Comment: One commenter suggested that it would be inappropriate to require facilities to submit affected individuals' information to DHS. The commenter suggested that requiring covered facilities to collect, verify, submit, and maintain this information creates an increased legal liability for covered facilities that have to accurately and timely collect, verify, submit, maintain and protect this sensitive information.

Response: DHS presumes that chemical facilities, as employers, have access to basic biographical information (such as names, dates of birth, genders, and citizenships) of many facility personnel and visitors.

As part of RBPS–12, each high-risk chemical facility is also required to conduct background checks to verify the identity, legal authorization to work, and criminal history of affected individuals. Many high-risk chemical facilities are collecting, verifying, and properly maintaining information necessary for these other verifications already. This already-collected information should include many, if not most of the necessary data elements required for submission to DHS to complete the check for an individual's ties to terrorism.

Comment: A few commenters stated that high risk chemical facilities are rarely in a legal position to guarantee the truth, correctness or completeness of information related to contractors, vendors, truck drivers or any other non-employees. Requiring signed documents by company officials will not ensure that information from parties outside of their legal control is true, correct, and complete. One commenter expressed concern that company or facility representatives are not experts in determining the validity of identification, and the affirmation statements the Department will require each Submitter to affirm should be modified to be ''the same information presented by the affected individual.''

Response: Each Submitter will be expected to affirm, to the best of his/her knowledge, that the information he/she submits to DHS on behalf of a high-risk chemical facility for vetting against the TSDB is true, correct, and complete. In the event that a high-risk chemical facility submits incorrect information through no fault of its own, the Department will expect the high-risk chemical facility to update the information in accordance with the proposed submission schedule. Steps that high-risk chemical facilities might take to validate personal information collected as part of identity, legal authorization to work, or criminal history checks are beyond the scope of this notice and are beyond the scope of the CFATS Personnel Surety Program ICR.

[3] The average hourly wage rate previously used by the Department in the 30-day and 60-day notices was $84. This average hourly wage rate was based upon the hourly wage rate estimate for Site Security Officers (SSO) contained in section 6.3.1 of the CFATS Regulatory Assessment, adjusted to account for passage of time since publication of the Regulatory Assessment. *See* CFATS Regulatory Assessment (Apr. 1, 2007), *http://www.regulations.gov/#!documentDetail;D=DHS-2006-0073-0116.*

Comment: The Department received comments requesting clarity as to whether covered facilities should submit names of emergency personnel who would qualify as affected individuals. One commenter noted a CFATS Frequently Asked Question (FAQ) which indicated that fire department personnel would not be required to undergo background checks.

Response: The Department expects high-risk chemical facilities to submit the information of affected individuals in accordance with the submission schedule to be published or disseminated by the Department. For purposes of RBPS–12, the Department affirms that certain populations are not affected individuals. Specifically: (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of the performance of their official duties are not affected individuals; (2) law enforcement officials at the state or local level that gain unescorted access to restricted areas or critical assets as part of the performance of their official duties are not affected individuals; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations are not affected individuals. This aligns with the population assumptions for the CFATS Personnel Surety Program embedded within the Regulatory Assessment.

The Department has updated FAQ 1368 (see *http://csat-help.dhs.gov*), and appreciates the comment which brought the FAQ to the Department's attention.

Comment: One commenter suggested that the Department is requesting information beyond what is required to identify people with terrorist ties when collecting work phone numbers and work email addresses. The commenter also suggested that collecting additional information for auditing purposes is beyond the scope of CFATS.

Response: DHS no longer plans to routinely collect affected individuals' work phone numbers and work email addresses. The Department disagrees, however, that collection of information for auditing purposes is beyond the scope of CFATS.

Comment: Several commenters suggested that the burden would be difficult to estimate unless the Department provided definitions for such terms as ''contractor'' and ''vendor.''

Response: Individual high-risk facilities may classify particular contractors or vendors, or categories of contractors or vendors, either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices. The Department's estimates regarding the information collection burden of the Personnel Surety Program reflect this approach.

Comment: One commenter was not aware of any facility that currently maintains, in an easily accessible or transferrable format, the information required for submission discussed in the ICR.

Response: The Department believes that the information necessary to identify individuals with terrorist ties is already in the possession of many high-risk chemical facilities, due to the other background checks already performed by those facilities. The burden outlined in this ICR accounts for the fact that some facilities do not possess this information, and that others do not possess this information in easily accessible or transferrable formats.

Comment: One commenter suggested that various flaws in the TSDB and various flaws in the Federal government's watchlisting protocols need to be addressed in order to make the CFATS Personnel Surety Program viable and fair.

Response: As indicated in the CFATS IFR, the Department has determined that a TSDB check is necessary for the purpose of protecting restricted areas and critical assets of high-risk chemical facilities from persons who may have ties to terrorism. *See* 72 FR 17708 (Apr. 9, 2007). The TSDB is the Federal government's integrated and consolidated terrorist watchlist and is the appropriate database to use to identify individuals with terrorist ties. Discussions regarding TSDB flaws and the Federal government's watchlisting protocols are beyond the scope of this notice.

Comment: One commenter requested clarity about the Department's reference that it may ''collect information on affected individuals as necessary to enable it to provide redress.'' Another commenter expressed concern that the CFATS Personnel Surety Program design does not set up a uniform, thorough system that gives workers full appeals or waiver procedures. Several commenters expressed concern about how the Department would provide meaningful redress under the design of the CFATS Personnel Surety Program.

Response: An ICR is not the appropriate vehicle for the Department to use to address privacy and redress issues related to the CFATS Personnel Surety Program. The Department will publish a Privacy Impact Assessment (PIA) about the CFATS Personnel Surety Program, to be made available on the Department's Web page at *http://www.dhs.gov/privacy* and *http://www.dhs.gov/chemicalsecurity.* The Department will also publish a System of Records Notice (SORN) for the CFATS Personnel Surety Program, and a Notice of Proposed Rulemaking proposing to take certain Privacy Act exemptions for the CFATS Personnel Surety Program System of Records.

(D) On Behalf of OMB, DHS Solicited Comments Regarding the Minimization of the Burden of Information Collection on Those Who Are To Respond, Including Tthrough the Use of Aappropriate Automated, Electronic, Mechanical, or Other Technological Collection Techniques or Other Forms of Information Technology (e.g., Permitting Electronic Submissions of Responses)

Comment: Three commenters suggested that the Department should allow private third parties to submit information of individuals to DHS on behalf of chemical facilities. Specifically, these commenters suggested that if private third parties could directly submit information, substantial burden could be eliminated for high-risk chemical facilities. Another commenter suggested that the Department should provide a means through which non-employees would be able to directly provide their information to the Department.

Response: As part of the Personnel Surety Program, DHS will also allow facilities to designate third party individuals as Submitters. Designated individuals will be able to submit TSDB screening information to DHS on behalf of the facilities that designate them as Submitters.

Comment: Commenters suggested that the ICR places undue burdens and costs on businesses that operate multiple regulated facilities where redundant information submissions would be required for a given individual who visits multiple sites.

Response: The Department has taken steps to minimize the potential for an affected individual's information to be submitted multiple times. Further, in the event that an affected individual's information is submitted to the Department multiple times, only one record will be transmitted to TSA to be vetted against the TSDB.

The primary step the Department has taken to minimize the potential for an affected individual's information to be submitted multiple times is ensuring that companies with many high-risk chemical facilities have flexibility to consolidate CSAT user roles. Specifically, CSAT will provide

companies the flexibility either to consolidate their user roles to allow a single Submitter for many facilities, or to elect for each facility to independently submit information to the Department. Each company may implement the best strategy for itself.

Comment: Several commenters suggested that requiring facilities to update and correct information about affected individuals will neither ''increase the accuracy of data collected,'' nor ''decrease the probability of incorrect matches'' against the TSDB. The commenters further suggested that updating and correcting information will significantly increase the administrative burden on companies required to provide the information and will also increase the likelihood that data may be incomplete and/or inaccurate.

Response: The Department is confident that matching correct and accurate information against records in the TSDB increases the accuracy of the vetting process. The use of inaccurate or false data prevents DHS from accurately screening individuals with or seeking access to high-risk chemical facilities for ties to terrorism.

Comment: Several commenters requested that the Department eliminate the requirement that facilities notify the Department when an affected individual no longer has access to a facility's restricted areas or critical assets.

Response: For the duration that an affected individual has or is seeking access to restricted areas or critical assets at high-risk chemical facilities, DHS will compare the affected individual's information against new and/or updated TSDB records. When the Department is made aware that an individual no longer has or is seeking access, that individual's information will no longer be vetted against the TSDB. Therefore, the Department will not eliminate the requirement that facilities must notify the Department when an affected individual no longer has or is seeking access to a facility's restricted areas or critical assets.

(E) DHS Solicited Comments That Respond to the Department's Interpretation of the Population Affected by RBPS–12's Background Check Requirement

Comment: Some commenters acknowledged the plain reading of CFATS, describing what categories of individuals are affected individuals for purposes of the CFATS Personnel Surety Program, while expressing their dissatisfaction that the Department was not pursuing rulemaking to modify the text of 6 CFR 27.230(a)(12). The majority of commenters, however, reiterated comments submitted during the 60-day comment period expressing disagreement with the definition of affected individuals. Commenters described the definition as a ''new'' CFATS requirement for escorted facility personnel and inconsistent with congressional intent, regulatory language contained in CFATS, guidance DHS has issued on RBPS satisfaction (available at *http://www.dhs.gov/xlibrary/assets/chemsec_cfats_risk based_performance_standards.pdf*), and with other regulatory programs designed to enhance the security of the nation's critical infrastructure. For example, some commenters mentioned that the U.S. Coast Guard permits individuals without TWICs to access the secure areas of MTSA-regulated facilities so long as those individuals are escorted. Commenters requested additional information as to why the Department has seemingly crafted new categories of affected individuals in the context of CFATS.

Response: The text of 6 CFR 27.230(a)(12) identifies who should appropriately undergo background checks as part of CFATS. The population of individuals who must be vetted under 6 CFR 27.230(a)(12) is the same as described in both the 60-day and 30-day notices: (1) Facility personnel who have or are seeking access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors who have or are seeking access to restricted areas or critical assets.[4] In this response to comments, however, the Department has clarified that certain populations are not affected individuals. Specifically: (1) Federal officials that gain unescorted access to restricted areas or critical assets as part of the performance of their official duties are not affected individuals; (2) law enforcement officials at the State or local level that gain unescorted access to restricted areas or critical assets as part of the performance of their official duties are not affected individuals; and (3) emergency responders at the state or local level that gain unescorted access to restricted areas or critical assets during emergency situations are not affected individuals.

Comment: Some commenters suggested that the Department is selecting only one possible interpretation of 6 CFR 27.230(a)(12). Specifically, commenters suggested that a plain English interpretation of the text, ''* * * appropriate background checks on and ensure appropriate credentials * * *'' could mean that sometimes it is appropriate not to conduct background checks on individuals with access to restricted areas or critical assets at high-risk chemical facilities.

Response: DHS disagrees with the commenters' interpretation of 6 CFR 27.230(a)(12). That section of CFATS requires that high-risk chemical facilities perform identity checks, criminal history checks, legal authorization to work checks, and terrorist ties checks on both (1) Facility personnel with access (unescorted or otherwise) to restricted areas or critical assets, and (2) unescorted visitors with access to restricted areas or critical assets.[5]

Comment: One commenter representing farmer-owned cooperatives explained that it is common for farmers to be unescorted in or near critical assets or restricted areas of high-risk chemical facilities when picking up products sold by or available from those facilities. The commenter stated that such a farmer would be seen at various times by various people throughout such facilities. The commenter requested clarity as to whether or not such a farmer would be an affected individual.

Response: The Department emphasizes that each high-risk chemical facility has the ability to tailor its SSP to meet its unique business and security needs, including the ability to tailor access control procedures for restricted areas and critical assets. Each high-risk chemical facility will need to consider its unique security concerns when determining which individuals will be afforded access to restricted areas or critical assets. If a farmer-owned cooperative, determined by the Department to be a high-risk chemical facility, decided to establish access controls such that an unescorted individual had access to restricted areas and critical assets within the high-risk chemical facility, then that unescorted individual's information would need to be submitted to the Department.

Comment: A few commenters requested clarity from the Department as to whether or not the scope of RBPS–12 extended beyond the physical perimeter of the high-risk chemical facility and potentially impacted individuals with access to networked computer systems.

Response: If a networked computer system is listed as a restricted area or critical asset in an approved SSP, then individuals with access to that networked computer system would be

[4] *See* footnote 1.

[5] *See* footnote 1.

affected individuals for purposes of RBPS–12.

(F) DHS Solicited Comments Which Respond to the Statement That a Federal Law Enforcement Agency May, if Appropriate, Contact the High-Risk Chemical Facility as a Part of a Law Enforcement Investigation Into Terrorist Ties of Facility Personnel

Comment: The Department received several comments suggesting that Federal law enforcement agencies should not be hindered in their investigatory or anti-terrorism responsibilities. Most commenters believe, however, that both high-risk chemical facilities and individuals being vetted against the TSDB should, on a routine basis, be notified of TSDB vetting results.

Response: It is the policy of the U.S. Government to neither confirm nor deny an individual's status in the TSDB.

Comment: Several commenters suggested that the policy of not routinely notifying high-risk chemical facilities of vetting results is inconsistent with other Federal security vetting programs. One commenter stated that another Federal background check program provides notice to the facility and the individual when an individual has or has not cleared a background check. The commenter further stated that, ''[t]his notice does not reveal to the employer facts that led the agency to disqualify the employee, but it does allow the employer the opportunity to immediately, if appropriate, remove the employee from work functions that would allow the individual to [perform sensitive work functions].''

Response: Providing a vetting result back to the facility or the individual being vetted would conflict with the U.S. Government policy to neither confirm nor deny an individual's status in the TSDB.

Comment: Several commenters requested additional information about the process and procedures the Federal Government would follow in the event that a known or suspected terrorist is identified who has or seeks access to restricted areas or critical assets at a high-risk chemical facility.

Response: DHS will not routinely notify high-risk chemical facilities of CFATS Personnel Surety Program vetting results. DHS will coordinate with Federal law enforcement entities to monitor and/or prevent situations in which known or suspected terrorists have access to high-risk chemical facilities. The precise manners in which DHS or Federal law enforcement entities could contact high-risk chemical facilities following vetting are beyond the scope of this notice.

Comment: One commenter recommended that the Department collect information on all employees who have CFATS-related adverse employment decisions, and make this information (not including personal identifiers) publically available.

Response: DHS will not collect information on employment decisions as part of the CFATS Personnel Surety Program.

(G) Respond to the Department's Intention To Collect Information That Identifies the High-risk Chemical Facilities, Restricted Areas and Critical Assets to Which Each Affected Individual Has Access

Comment: One commenter supported the Department's intention to collect information that identifies the high-risk chemical facilities to which each affected individual has access. Most commenters generally objected, however, to the Department's intention to collect information that identifies the high-risk chemical facilities to which each affected individual has access. One commenter expressed concern that the ICR indicated that the Department was collecting information about specific restricted areas or critical assets within each facility.

Response: As part of the Personnel Surety Program the Department does not intend to collect information that identifies the specific restricted areas and critical assets within high-risk chemical facilities to which each affected individual has or is seeking access.

Comment: A common objection made by commenters was that the Department was creating a tool to track individuals' movement from site to site, resulting in a program which far exceeds the Department's stated goal of identifying individuals that have ties to terrorism.

Response: DHS has no intention to and will not track the movement of affected individuals between and among high-risk chemical facilities. The Department will only require a high-risk chemical facility to submit information about an affected individual to the Department (through CSAT) for the purpose of identifying individuals with terrorist ties once. A high-risk chemical facility will not need to submit to DHS information about a single affected individual each time that affected individual accesses restricted areas or critical assets.

As mentioned previously in this notice, in accordance with the proposed submission schedule, high-risk chemical facilities will also be required to submit updated or corrected information about each affected individual, and to notify DHS when an affected individual no longer has or is seeking access to that facility's restricted areas or critical assets.

Although the Department will not track the movement of affected individuals between and among high-risk chemical facilities, the Department will associate an affected individual with the high-risk chemical facility (or facilities) for which the high-risk chemical facility Submitter providing that affected individual's information into CSAT is responsible. In the event that a Submitter enters information into CSAT on behalf of more than one facility, by default the Department will associate the affected individual with all of the facilities for which the Submitter is responsible. A Submitter may, however, modify the lists of facilities with which particular affected individuals are associated. The Department may contact the designated points of contact for particular high-risk chemical facilities for several reasons, including to identify exactly at which high-risk chemical facilities particular affected individuals have access to restricted areas or critical assets.

Comment: Commenters objected to the Department's intention to collect information that identifies high-risk chemical facilities because commenters claimed that this would cause the Department to run the risk of amassing so much information that the information collected will be meaningless.

Response: The Department disagrees. DHS requires a minimum amount of information to perform checks to determine if affected individuals have ties to terrorism, and to identify the facilities to which affected individuals have access. DHS requires this information in order to carry out the terrorist ties checks required by CFATS. DHS is confident that that it can effectively collect and maintain this information, as appropriate.

Comment: A few commenters reported that during a meeting between DHS and the Chemical Sector Coordinating Council on April 28, 2010, the Department stated its intention to collect information that identifies the high-risk chemical facilities, restricted areas, and critical assets to which each affected individual has access, and that it would use this information to conduct analysis and investigations.

Response: DHS met with the Chemical Sector Coordinating Council on April 28, 2010, and reiterated the Department's intention to collect information that identifies the high-risk

chemical facilities to which each affected individual has access. The Department clarified that in the event that a match to a record in the TSDB is identified, the Department would be able to quickly identify the specific chemicals of interest (COI) the match may have access to and the contact information of the appropriate person at the chemical facility. This information may prove useful in determining an appropriate Federal, state, or local response in the event that one is necessary. The Department emphasizes that there will be no ''tracking'' of affected individuals, nor will DHS collect information on specific restricted areas or critical assets to which an affected individual has or is seeking access, as part of the CFATS Personnel Surety Program.

Comment: Several commenters suggested that the Department should reach out to the facility contact that submitted an individual's information to determine specifics about the individual's site access when circumstances warrant.

Response: DHS will collect information about facility points of contact in case follow-up is necessary.

(H) DHS Solicited Comments Which Respond to the Department's Intention to Seek an Exception to the Notice Requirement Under 5 CFR 1320.8(b)(3).

Comment: The Department received only a few comments in response to this question. None of these comments supported the Department's intention to seek an exception to the notice requirement under 5 CFR 1320.8(b)(3).

Response: The Department carefully reviewed the comments, but disagrees that an exception to the Paperwork Reduction Act (PRA) requirement, as contained in 5 CFR 1320.8(b)(3), that requires information collections to provide certain reasonable notices, will pose a risk to privacy. Therefore, the Department will request from OMB an exception for the CFATS Personnel Surety Program to the PRA requirement, as contained in 5 CFR 1320.8(b)(3), which requires Federal agencies to confirm that their information collections provide certain reasonable notices to affected individuals. If this exception is granted, DHS will be relieved of the potential obligation to require high-risk chemical facilities to collect signatures or other positive affirmations of these notices from affected individuals. Whether or not this exception is granted, DHS will still require high-risk facilities to affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974, 5 U.S.C. 552a, has been given to affected individuals before their information is submitted to DHS.

The Department's request for an exception to the requirement under 5 CFR 1320.8(b)(3) would not exempt high-risk chemical facilities from having to adhere to applicable Federal, state, local, or tribal laws, or to regulations or policies pertaining to the privacy of facility personnel and the privacy of unescorted visitors.

(I) DHS Also Received Unsolicited Comments in Response to the 30-day Notice Related to the CFATS Personnel Surety Program

Comment: Several commenters suggested that the CFATS Personnel Surety Program outlined in the ICR exceeds the Department's statutory authority, because the proposed CFATS Personnel Surety Program design conflicts with Section 550. Commenters suggested that the CFATS Personnel Surety Program's design eliminates a high-risk facility's flexibility to achieve compliance with RBPS–12. Specifically, the commenters suggested that the CFATS Personnel Surety Program design precludes a facility from satisfying RBPS–12 by leveraging measures other than the CFATS Personnel Surety Program to identify ties to terrorism, which commenters assert is a possible violation of Section 550.

Response: The CFATS Personnel Surety Program will not exceed the Department's statutory authority, nor will it violate or conflict with Section 550. DHS will provide and approve sufficient alternative methods for facility satisfaction of the terrorism ties background check portion of RBPS–12. Specifically, the CFATS Personnel Surety Program will provide several options to high-risk chemical facilities, including the following options:

Facilities can restrict the numbers and types of persons whom they allow to access their restricted areas and critical assets, thus limiting the number of persons who will need to be vetted against the TSDB. Facilities additionally have wide latitude in how they define their restricted areas and critical assets in their SSPs, and thus are able to limit or control the numbers and types of persons requiring TSDB screening. Facilities can choose to escort visitors to restricted areas and critical assets in lieu of performing the background checks required by RBPS–12 on them. Facilities can also submit different biographic information to DHS through CSAT for affected individuals holding TWIC, HME, NEXUS, SENTRI, or FAST credentials than for affected individuals not holding such credentials.

Comment: Many commenters suggested that this ICR is improper because it makes changes to CFATS and results in de facto rulemaking. Specifically, commenters suggested that four elements of the CFATS Personnel Surety Program are changes to CFATS prescribing specific protocols for administering background checks that take a categorically different approach than all other TSDB background check programs currently administered in the United States. Those elements were: (1) The Department's plan to conduct ''recurrent vetting'' of affected individuals, thus requiring facilities to notify the Department when a person no longer has access to restricted areas or critical assets; (2) the Department's intention to require facilities to submit updates on an approved schedule whenever an affected individual's information has changed; (3) the possibility that the Department would not recognize TSDB vetting results completed by other Federal programs as satisfying RBPS–12's terrorist ties check requirement; and (4) the Department's intention to link each affected individual to particular high-risk chemical facilities.

Response: The ICR, and the associated 60-day and 30-day notices, do not make changes to CFATS. The ICR and associated notices provide descriptions of the nature of the CFATS Personnel Surety Program's information collection, categories of respondents, estimated burden, and costs. The PRA requires the Department to provide sufficient detail about how the Department would collect information under the CFATS Personnel Surety Program to enable the public to provide comment on that information collection.

Comment: Many commenters suggested that the Department did not properly account for Executive Order 12866 in issuing the 60- and 30-day notices preceding this notice. Among other things, Executive Order 12866 directs agencies to assess the effects of Federal regulatory actions on state, local, and tribal governments, and the private sector, and to provide qualitative and quantitative assessments of the anticipated costs and benefits of Federal mandates resulting in annual expenditures of $100,000,000 or more, including the costs and benefits to state, local, and tribal governments, and the private sector. Commenters suggested that the Department carefully consider whether the CFATS Personnel Surety Program ICR qualifies as a significant rulemaking such that it is subject to various requirements of Executive Order 12866.

Response: The Department disagrees that this information collection alone will generate expenditures in excess of $100,000,000. The Department also disagrees that this information collection constitutes rulemaking. When the Department published CFATS, however, it did consider CFATS to be a significant rulemaking. Therefore, in compliance with the requirements of Executive Order 12866, the Department outlined in the CFATS Regulatory Assessment the assumptions it used to estimate the costs of CFATS, which included the Department's estimates related to Personnel Surety in section 6.3.10 of the CFATS Regulatory Assessment.

Comment: A few commenters suggested that this information collection will have a significant economic impact on a substantial number of small entities, which requires the Department to conduct a Regulatory Flexibility Analysis in accordance with the Regulatory Flexibility Act (RFA).

Response: The RFA mandates that an agency conduct an analysis when an agency is required to publish a notice of proposed rulemaking, not when soliciting comments in preparation of submitting an ICR to OMB for review and clearance in accordance with the PRA. *See* 5 U.S.C. 603(a). The Department concluded in the preamble to the IFR that because Congress authorized DHS to proceed in promulgating CFATS without the traditional notice-and-comment required by the Administrative Procedure Act, the Department was not required to prepare an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act. *See* 72 FR 17722 (Apr. 9, 2007). Even so, the Department did consider the impacts of CFATS on small entities. Specifically, the CFATS Regulatory Assessment contains the Department's analysis of the impacts of CFATS on small entities. After consideration of the percentage of small entities that may have to comply with the risk-based performance standards (which include background checks under the CFATS Personnel Surety Program) required by CFATS and the compliance costs explained in the CFATS Regulatory Assessment, the Department determined that CFATS may have a significant economic impact on a substantial number of small entities.

Comment: One commenter requested that the Department remove administrative roadblocks that either complicate the CFATS Personnel Surety Program or prohibit measures that would simplify and enhance the CFATS Personnel Surety Program. Specifically, the commenter requested that the Department allow employees to apply for TWICs, if their individual jobs require them to have access to restricted areas or critical assets at high-risk chemical facilities. The commentor suggested that there is no language in MTSA that expressly prohibits the use of TWICs at non-maritime facilities.

Response: TWIC's authorizing statute, the Maritime Transportation Security Act of 2002 (MTSA), as amended, 46 U.S.C. 70101 *et seq.,* explicitly applies ''transportation security card'' requirements to: ''individual[s] allowed unescorted access to secure area[s] designated in * * * [maritime] vessel or [maritime] facility security plan[s]'' (70105(b)(2)(A)); certain MTSA license and permit holders (70105(b)(2)(B)); maritime vessel pilots (70105(b)(2)(C)); maritime towing vessel personnel (70105(b)(2)(D)); individuals with access to certain protected maritime security information (70105(b)(2)(E)); and certain other individuals (70105(b)(2)(F)–(G)). Further, individuals are eligible to receive a TWIC unless, among other criteria, they have committed certain ''disqualifying criminal offense[s],'' or do not meet certain ''immigration status requirements.'' 49 CFR 1572.5(a)(1)–(2). The CFATS authorizing statute, however, applies to ''chemical facilities that * * * present high levels of security risk.'' Department of Homeland Security Appropriations Act of 2007, Pub. L. 109–295, 550 (Oct. 4, 2006). CFATS ''does not apply to facilities regulated pursuant to the Maritime Transportation Security Act of 2002.'' 6 CFR 27.110(b). CFATS Personnel Surety Program screening requirements apply only to high-risk chemical facilities' ''personnel, and as appropriate * * * unescorted visitors with access to restricted areas or critical assets.'' 6 CFR 27.230(a)(12). Individuals are not eligible for TWICs solely because they have access to high-risk chemical facilities covered by CFATS. Accordingly, the CFATS Personnel Surety Program is not duplicative with the TWIC program in terms of type of facilities covered or program objectives.

High-risk chemical facilities may, however, choose to leverage TWIC credentials as part of the identity, legal authorization to work, and criminal history background checks they perform under CFATS. *See* 6 CFR 27.230(a)(12)(i)–(iii). The precise manners in which high-risk chemical facilities could leverage TWIC credentials as part of identity, legal authorization to work, and criminal history background checks could vary from facility to facility, and should be described in individual facilities' SSPs.

Comment: Several commenters suggested that collecting sufficient information to conduct the background checks required by RBPS–12 might cause high-risk chemical facilities to violate State privacy laws and/or the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

Response: The Department does not agree that participation in the CFATS Personnel Surety Program will cause high-risk chemical facilities to violate the Fair Credit Reporting Act. Similarly, the Department does not agree that participation in the CFATS Personnel Surety Program will cause high-risk chemical facilities to violate State law.

High-risk chemical facilities may conduct the identity, legal authorization to work, and criminal history background checks required by 6 CFR 27.230(a)(12)(i)–(iii) in a variety of ways. Although identity, legal authorization to work, and criminal history background checks are not the subject of this notice, the Department believes that high-risk chemical facilities can structure and carry out these background checks in compliance with all applicable Federal and state laws, including the Fair Credit Reporting Act and state privacy laws.

Comment: One commenter stated that screening databases and watchlists should be publicly accessible to allow for efficient and consistent background checks. The commenter stated that other U.S. and partner nation agencies share this information in the public domain, which allows for regulated entities to engage third-party vendors to facilitate background screening. The commenter cited specifically Office of Foreign Assets Control watch lists, which are available to the public.

Response: The Department does not agree that the TSDB should be publicly available. The TSDB is the U.S. government's consolidated and integrated terrorist watchlist, used to identify known or suspected terrorists, containing sensitive information not appropriate for public consumption.

The TSDB remains an effective tool in the government's counterterrorism efforts because its contents are not disclosed. For example, if it was revealed who was in the TSDB, terrorist organizations would be able to circumvent the purpose of the terrorist watchlist by determining in advance which of their members are likely to be questioned or detained.

Comment: One commenter stated that there is no central database that covered entities could query to validate that an already-existing background screening may be on file with the Department.

Response: DHS agrees that there is currently no central database that allows the public to determine that an individual has already undergone screening by the Department.

Comment: One commenter was troubled by the information pertaining to RBPS–12 contained in Appendix C of the May 2009 Risk-Based Performance Standards Guidance (*http://www.dhs.gov/xlibrary/assets/chemsec_cfats_risk based_performance_standards.pdf*), because the commenter believes that certain types of measures, procedures, policies, and plans mentioned in Appendix C are not appropriate for determining if chemical facility personnel are terrorist threats.

Response: The Department expects high-risk chemical facilities to implement appropriate security measures to conduct identity, criminal history, and legal authorization to work background checks. These security measures can vary from facility to facility commensurate with facility-specific risks, security issues, and business practices. The guidance referenced by the commenter (see pages 180 to 186 of the Risk-Based Performance Standards Guidance), and other guidance addressing identity, criminal history, and legal authorization to work background checks, however, is not guidance addressing compliance with 6 CFR 27.230(a)(12)(iv), and as such is not the subject of this notice, nor is it the subject of the underlying ICR or of the 30- or 60-day notices preceding this notice.

Comment: One commenter requested that the Department clarify what appeal or waiver options an affected individual has if his/her employer takes an adverse employment action against him/her based on RBPS–12 background checks or based on information received or obtained under the CFATS Personnel Surety Program. The commenter also requested that the Department prevent high-risk chemical facilities from using personal information collected from affected individuals as part of RBPS–12 for purposes other than conducting the background checks required by RBPS–12.

Response: High risk chemical facilities' employment actions are not regulated by CFATS.

The ICR the Department will submit to OMB, this notice, the 60-day notice, and the 30-day notice address the CFATS Personnel Surety Program, not the identity, legal authorization to work, and criminal history background checks required by 6 CFR 230(a)(12)(i)–(iii). Discussion of information collected as part of those other three background checks, or employment decisions based on them, is beyond the scope of this notice.

Conclusion

As mentioned in the summary section of this notice, DHS has submitted an ICR to OMB for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice responds to comments received during the 30-day notice.

Prior to implementation of the CFATS Personnel Surety Program, the Department will also publish a Privacy Impact Assessment (PIA) about the CFATS Personnel Surety Program, available on the Department's Web page at *http://www.dhs.gov/privacy* and *http://www.dhs.gov/chemicalsecurity.* The Department will also publish a System of Records Notice (SORN) for the CFATS Personnel Surety Program, and a Notice of Proposed Rulemaking proposing to take certain Privacy Act exemptions for the CFATS Personnel Surety Program System of Records.

The Department will also publish a notice, and/or send notice to high-risk chemical facilities individually, stating that the CFATS Personnel Surety Program has been implemented. In that notice, the Department will include description of how the CFATS Personnel Surety Program will be implemented, as well as the information submission schedule high-risk chemical facilities will be required to follow. The notice will also describe how a high-risk chemical facility can request a variance from the submission schedule.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Infrastructure Security Compliance Division.

Title: CFATS Personnel Surety Program.

Form: DHS Form 11000–29.

OMB Number: 1670–NEW.

Frequency: As required by a DHS-approved schedule.

Affected Public: High-risk chemical facilities as defined in 6 CFR Part 27, high-risk chemical facility personnel, and as appropriate, unescorted visitors with access to restricted areas or critical assets.

Number of Respondents: 1,303,700 individuals.

Estimated Time per Respondent: 0.54 hours (32.4 minutes).

Total Burden Hours: 707,200 annual burden hours.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $29,704,000.

Signed: June 6, 2011.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2011–14382 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–9–P

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

[Docket No. DHS–2011–0032]

Privacy Act of 1974; Department of Homeland Security/National Protection and Programs Directorate—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records

AGENCY: Privacy Office, DHS.

ACTION: Notice of Privacy Act system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Homeland Security proposes to establish a new system of records notice titled, ''Department of Homeland Security/National Protection and Programs Directorate—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records.'' This new system of records collects information on individuals,—facility personnel and unescorted visitors—who have or are seeking access to restricted areas and critical assets at high risk chemical facilities and compares this information to the Terrorist Screening Database, the terrorist watchlist maintained by the Federal Bureau of Investigation's Terrorist Screening Center. The Department of Homeland Security is issuing a Notice of Proposed Rulemaking concurrently with this system of records elsewhere in the **Federal Register** to exempt portions of the system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements. This newly established system of records will be included in the Department of Homeland Security's inventory of record systems.

DATES: Submit comments on or before July 14, 2011. This system will be effective July 14, 2011.

ADDRESSES: You may submit comments, identified by docket number [DHS–2011–0032] by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

- *Fax:* 703–483–2999.
- *Mail:* Mary Ellen Callahan, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.
- *Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will 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.*

FOR FURTHER INFORMATION CONTACT: For general questions please contact: Emily Andrew (703–235–2182), Privacy Officer, National Protection and Programs Directorate, Department of Homeland Security, Washington, DC 20528. For privacy issues please contact: Mary Ellen Callahan (703–235–0780), Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, the Department of Homeland Security (DHS)/National Protection and Programs Directorate (NPPD) proposes to establish a DHS system of records titled, ''DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records.''

On October 4, 2006, the President signed the DHS Appropriations Act of 2007 (the Act), Public Law 109–295. Section 550 of the Act (Section 550) provides DHS with the authority to regulate the security of high-risk chemical facilities. DHS has promulgated regulations implementing Section 550, the Chemical Facility Anti-Terrorism Standards (CFATS), 6 CFR part 27.

Section 550 requires that DHS establish Risk Based Performance Standards (RBPS) as part of CFATS. RBPS–12 (6 CFR 27.230(a)(12)(iv)) requires that regulated chemical facilities implement ''measures designed to identify people with terrorist ties.'' The ability to identify individuals with terrorist ties is an inherently governmental function and requires the use of information held in government-maintained databases, which are unavailable to high-risk chemical facilities. Therefore, DHS is implementing the CFATS Personnel Surety Program, which will allow chemical facilities to comply with RBPS–12 by implementing ''measures designed to identify people with terrorist ties.''

The CFATS Personnel Surety Program will work with the DHS Transportation Security Administration (TSA) to identify individuals who have terrorist ties by vetting information submitted by each high-risk chemical facility against the Terrorist Screening Database (TSDB). The TSDB is the Federal government's consolidated and integrated terrorist watchlist of known and suspected terrorists, maintained by the Department of Justice (DOJ) Federal Bureau of Investigation's (FBI) Terrorist Screening Center (TSC). For more information on the TSDB, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

High-risk chemical facilities or their designees will submit the information of: (1) Facility personnel who have or are seeking access, either unescorted or otherwise, to restricted areas or critical assets; and (2) unescorted visitors who have or are seeking access to restricted areas or critical assets. These persons, about whom high-risk chemical facilities and facilities' designees will submit information to DHS, are referred to in this notice as ''affected individuals.'' Individual high-risk facilities may classify particular contractors or categories of contractors either as ''facility personnel'' or as ''visitors.'' This determination should be a facility-specific determination, and should be based on facility security, operational requirements, and business practices.

Information will be submitted to DHS/NPPD through the Chemical Security Assessment Tool (CSAT), the online data collection portal for CFATS. The high-risk chemical facility or its designees will submit the information of affected individuals to DHS through CSAT. The submitters of this information (''Submitters'') for each high-risk chemical facility will also affirm, to the best of their knowledge, that the information is: (1) True, correct, and complete; and (2) collected and submitted in compliance with the facility's Site Security Plan (SSP) or Alternative Security Program (ASP), as reviewed and authorized and/or approved in accordance with 6 CFR 27.245. The Submitter(s) of each high-risk chemical facility will also affirm that, in accordance with their Site Security Plans, notice required by the Privacy Act of 1974, 5 U.S.C. § 552a, has been given to affected individuals before their information is submitted to DHS.

DHS will send a verification of receipt to the Submitter(s) of each high-risk chemical facility when a high-risk chemical facility: (1) Submits information about an affected individual for the first time; (2) submits additional, updated, or corrected information about an affected individual; and/or (3) notifies DHS that an affected individual no longer has or is seeking access to that facility's restricted areas or critical assets.

Upon receipt of each affected individual's information in CSAT, DHS/NPPD will send a copy of the information to DHS/TSA. Within DHS/TSA, the Office of Transportation Threat Assessment and Credentialing (TTAC) conducts vetting against the TSDB for several DHS programs. DHS/TSA/TTAC will compare the information of affected individuals collected by DHS (via CSAT) to information in the TSDB. DHS/TSA/TTAC will forward potential matches to the DOJ/FBI/TSC, which will make a final determination of whether an individual's information is identified as a match to a record in the TSDB.

In certain instances, DHS/NPPD may contact a high-risk chemical facility to request additional information (*e.g.,* visa information) pertaining to particular individuals in order to clarify suspected data errors or resolve potential matches (*e.g.,* in situations where an affected individual has a common name). Such requests will not imply, and should not be construed to indicate that an individual's information has been confirmed as a match to a TSDB record.

DHS/NPPD may also conduct data accuracy reviews and audits as part of the CFATS Personnel Surety Program. Such reviews may be conducted on random samples of affected individuals. To assist with this activity, DHS/NPPD may request information pertaining to affected individuals that was previously provided to DHS/NPPD by high-risk chemical facilities, in order to confirm the accuracy of that information.

Consistent with the Department's information sharing mission, information stored in the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records may be shared with other DHS components, as well as appropriate Federal, state, local, Tribal, foreign, or international government agencies. This sharing will only take place after DHS determines that the receiving component or agency has a need to know the information to carry out national security, law enforcement, immigration, intelligence, or other functions consistent with the routine uses set forth in this system of records notice.

Additionally, DHS is issuing a Notice of Proposed Rulemaking (NPRM) concurrently with this system of records, to be published elsewhere in

the **Federal Register**, to exempt portions of the system of records from provisions of the Privacy Act because of criminal, civil, and administrative enforcement requirements.

This newly established system of records will be included in the Department's inventory of record systems.

II. Privacy Act

The Privacy Act embodies fair information principles in a statutory framework governing the means by which the United States government collects, maintains, uses, and disseminates individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency for which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, individuals are defined to encompass United States citizens and lawful permanent residents. As a matter of policy, DHS extends administrative Privacy Act protections to all individuals where systems of records maintain information on U.S. citizens, lawful permanent residents, and visitors. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DHS by complying with DHS Privacy Act regulations, 6 CFR Part 5.

The Privacy Act requires each agency to publish in the **Federal Register** a description denoting the type and character of each system of records that the agency maintains, and the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses to which their records are put, and to assist individuals to more easily find such records within the agency. Below is the description of the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records.

In accordance with 5 U.S.C. 552a(r), DHS has provided a report of this system of records to the Office of Management and Budget and to Congress.

System of Records DHS/NPPD—002

SYSTEM NAME:

DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive, law enforcement sensitive, for official use only, and classified.

SYSTEM LOCATION:

Records are maintained at DHS and Component headquarters in Washington, DC, and at field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) High-risk chemical facility personnel and unescorted visitors who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities (see 6 CFR 27.230(a)(12));

(2) High-risk chemical facility personnel or designees who contact DHS/NPPD or a Federal law enforcement entity with follow-up questions regarding submission of an individual's information to DHS/NPPD;

(3) Individuals listed in the TSDB against whom potential or confirmed matches have been made; and

(4) Individuals who have been or seek to be distinguished from individuals in the TSDB through redress or other means as a result of the Personnel Surety Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) High-risk chemical facilities are required to submit the following information on all facility personnel and unescorted visitors who have or are seeking access to restricted areas or critical assets:

a. U.S. Citizens and Lawful Permanent Residents

i. Full name;

ii. Date of birth; and

iii. Citizenship or Gender.

b. Non-U.S. persons

i. Full name;

ii. Date of birth;

iii. Citizenship; and

iv. Passport information and/or alien registration number.

(2) To reduce the likelihood of false positives in matching against the TSDB, high-risk chemical facilities may also (optionally) submit the following information on facility personnel and unescorted visitors who have or are seeking access to restricted areas or critical assets:

a. Aliases;

b. Gender (for Non-U.S. persons);

c. Place of birth; and

d. Redress Number.

(3) High-risk chemical facilities may submit different information on individuals who maintain DHS screening program credentials or endorsements that require TSDB checks equivalent to the checks to be performed as part of the CFATS Personnel Surety Program. Instead of submitting the information listed in category (1), above, high risk chemical facilities may submit the following information for such individuals:

a. Full name;

b. Date of birth;

c. Name of the DHS program which conducts equivalent vetting against the TSDB, such as the Transportation Worker Identification Credential (TWIC) program or the Hazardous Materials Endorsement (HME) program;

d. Unique number, or other program specific verifying information associated with a DHS screening program, necessary to verify an individual's enrollment, such as TWIC Serial Number for the TWIC program, or Commercial Driver's License (CDL) Number and CDL issuing state(s) for the HME program; and

e. Expiration date of the credential endorsed or issued by the DHS screening program.

This alternative is optional—high-risk chemical facilities may either submit the information listed in category (1) for such individuals, or may submit the information listed in category (3) for such individuals.

(4) When high-risk chemical facilities choose to submit the information listed in category (3), above, they may also (optionally) submit the following information on facility personnel and unescorted visitors who have or are seeking access to restricted areas or critical assets:

a. Aliases;

b. Place of Birth;

c. Gender;

d. Citizenship; and

e. Redress Number.

(5) DHS could collect additional identifying information from a high-risk chemical facility, as necessary to confirm or clear a potential match to a TSDB record. Information collected by high-risk chemical facilities and submitted to DHS for this purpose could include any information listed in categories (1) through (4), passport information, visa information, driver's license information, or other available identifying particulars, used to compare the identity of an individual being screened with information listed in the TSDB;

(6) In the event that a confirmed match is identified as part of the CFATS Personnel Surety Program, in addition to other records listed under the categories of records section of this SORN, DHS will obtain references to and/or information from other government law enforcement and

intelligence databases, or other relevant databases that may contain terrorism information;

(7) Information necessary to assist in tracking submissions and transmission of records, including electronic verification that DHS has received a particular record; and

(8) Information provided by individuals covered by this system in support of any redress request, including DHS Redress Numbers and/or any of the above categories of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

DHS Appropriations Act of 2007, Section 550, Public Law 109–295, 120 Stat. 1355 (October 4, 2006), as amended; and the Chemical Facility Anti-Terrorism Standards, 6 CFR part 27 (published April 9, 2007), as amended.

PURPOSE(S):

Information is collected to identify persons listed in the TSDB, who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), all or a portion of the records or information contained in this system may be disclosed outside DHS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To the Department of Justice (including United States Attorney Offices) or other Federal agency conducting litigation or in proceedings before any court, adjudicative or administrative body, when it is necessary to the litigation and one of the following is a party to the litigation or has an interest in such litigation:

1. DHS or any component thereof;

2. Any employee of DHS in his/her official capacity;

3. Any employee of DHS in his/her individual capacity where the Department of Justice or DHS has agreed to represent the employee; or

4. The United States, or any agency thereof, is a party to the litigation or has an interest in such litigation, and DHS determines that the records are both relevant and necessary to the litigation and the use of such records is compatible with the purpose for which DHS collected the records.

B. To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

C. To the National Archives and Records Administration or other Federal government agencies pursuant to records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

D. To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

E. To appropriate agencies, entities, and persons when:

1. DHS suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised;

2. The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by DHS or another agency or entity) or harm to the individual that relies upon the compromised information; and

3. The disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

F. To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for DHS, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to DHS officers and employees.

G. To an appropriate Federal, state, Tribal, territorial, local, international, or foreign law enforcement agency or other appropriate authority charged with investigating or prosecuting a violation or enforcing or implementing a law, rule, regulation, or order, where a record, either on its face or in conjunction with other information, indicates a violation or potential violation of law, which includes criminal, civil, or regulatory violations and such disclosure is proper and consistent with the official duties of the person making the disclosure.

H. To Federal, state, local, Tribal, territorial, foreign, multinational, or private sector entities as appropriate to assist in coordination of terrorist threat awareness, assessment, analysis or response.

I. To an appropriate Federal, state, Tribal, local, international, or foreign agency or other appropriate authority regarding individuals who pose, or are suspected of posing a risk to national security.

J. To an appropriate Federal, state, Tribal, local, international, foreign agency, other appropriate governmental entities or authority to:

1. Determine whether an individual is a positive identity match to an identity in the TSDB;

2. Facilitate operational, law enforcement, or intelligence responses, if appropriate, when vetted individuals' identities match identities in the TSDB;

3. Provide information and analysis about terrorist encounters and known or suspected terrorist associates to appropriate domestic and foreign government agencies and officials for counterterrorism purposes; or

4. Perform technical implementation functions necessary for the CFATS Personnel Surety Program.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained at secured government facilities, Federal contractor locations, or locations of other parties that perform functions related to the CFATS Personnel Surety Program. Records are stored on magnetic disc, tape, digital media, and CD–ROM, and may also be retained in hard copy format in secure file folders or safes.

RETRIEVABILITY:

Records are retrievable by searching any of the categories of records listed above. Records may also be retrievable by relevant chemical facility name, chemical facility location, chemical facility contact information, and by other facility-specific data points.

SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DHS automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

RETENTION AND DISPOSAL:

A proposed schedule for the retention and disposal of records collected under the DHS/NPPD—002 Chemical Facility Anti-Terrorism Standards Personnel Surety Program System of Records is being developed by the DHS and NPPD Offices of Records Management for approval by the National Archives and Records Administration (NARA).

The length of time DHS/NPPD will retain information on individuals will be dependent on individual TSDB vetting results. Specifically, individuals' information will be retained as described below, based on the individuals' placements into three categories:

(1) Information pertaining to an individual who is not a potential or confirmed match to a TSDB record will be retained for one year after a high-risk chemical facility has notified NPPD that the individual no longer has or is seeking access to the restricted areas or critical assets of the facility;

(2) Information pertaining to an individual who may originally have appeared to be a match a TSDB record, but who was subsequently determined not to be a match, will be retained for seven years after completion of TSDB matching, or one year after the high-risk chemical facility that submitted that individual's information has notified DHS/NPPD that the individual no longer has or is seeking access to the restricted areas or critical assets of the facility, whichever is later; and

(3) Information pertaining to an individual who is a positive match to a TSDB record will be retained for ninety-nine years after completion of matching activity, or seven years after DHS/NPPD learns that the individual is deceased, whichever is earlier.

DHS/TSA/TTAC will maintain records within its possession in accordance with the DHS/TSA–002—Transportation Security Threat Assessment System of Records, 75 FR 28046 (May 19, 2010). DHS/CBP will maintain records in its possession in accordance with the DHS/CBP–002—Global Enrollment System of Records, 71 FR 20708 (April 21, 2006).

DHS/NPPD will also retain records to conduct inspections or audits under 6 CFR 27.245 and 6 CFR 27.250 to ensure that high-risk chemical facilities are in compliance with CFATS. These records could include the names of individuals with access to high-risk chemical facilities' restricted areas and critical assets, the periods of time during which high-risk chemical facilities indicate that such individuals have/had access, and any other information listed elsewhere in this notice, as appropriate.

The retention periods for these records provide reasonable amounts of time for law enforcement, intelligence, or redress matters involving individuals who have or are seeking access to restricted areas or critical assets at high-risk chemical facilities.

SYSTEM MANAGER AND ADDRESS:

CFATS Personnel Surety Program Manager, 250 Murray Lane, SW., Mail Stop 0610, Washington, DC 20528.

NOTIFICATION PROCEDURE:

The Secretary of Homeland Security is proposing to exempt this system from the notification, access, and amendment procedures of the Privacy Act. DHS/NPPD, however, will consider individual requests to determine whether or not information may be released. Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request in writing to the DHS/NPPD Freedom of Information Act (FOIA) Officer, whose contact information can be found at *http://www.dhs.gov/foia* under ''contacts.''

When seeking records about yourself from this system of records or any other Department system of records your request must conform with the Privacy Act regulations set forth in 6 CFR part 5. You must first verify your identity, meaning that you must provide your full name, current address, and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you may obtain forms for this purpose from the Chief Privacy Officer and Chief Freedom of Information Act Officer, *http://www.dhs.gov* or 1–866–431–0486. In addition you should provide the following:

- An explanation of why you believe the Department would have information about you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe records containing information about you would have been created;
- Provide any other information that will help the FOIA staff determine which DHS component agency may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

RECORD ACCESS PROCEDURES:

See ''Notification procedure'' above.

CONTESTING RECORD PROCEDURES:

See ''Notification procedure'' above.

RECORD SOURCE CATEGORIES:

Information is primarily obtained from high-risk chemical facilities and their designees. High-risk chemical facilities shall provide notice to each affected individual prior to submission of the affected individual's information to DHS/NPPD. This will include notice that additional information may be requested after the initial submission. Information may also be obtained from other DHS programs when DHS verifies enrollment of an affected individual in another vetting or credentialing program. Information may also be obtained from the DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007), or from other FBI sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Concurrently with publication of this system of records notice, the Secretary of Homeland Security is publishing a notice of proposed rulemaking proposing to exempt this system from the following provisions of the Privacy Act, subject to the limitations set forth therein: 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I); and (f). These exemptions are made pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

Further, DHS derivatively claims some exemptions for this system of records because it may contain records or information recompiled from or created from information contained in the TSDB. For more information on the FBI's Terrorist Screening Records System, see DOJ/FBI—019 Terrorist Screening Records System, 72 FR 47073 (August 22, 2007).

DHS does not claim any exemptions for the information high-risk chemical facilities (or their designees) submit to DHS as part of this system of records.

Dated: June 6, 2011.

Mary Ellen Callahan,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2011–14383 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2011–0119]

Collection of Information Under Review by Office of Management and Budget; OMB Control Numbers: 1625–0020, 1625–0022, 1625–0029 and 1625–0031

AGENCY: Coast Guard, DHS.

ACTION: Thirty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 the U.S. Coast Guard is forwarding Information Collection Requests (ICRs), abstracted below, to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting approval of a revision to the following collections of information: 1625–0020, Security Zones, Regulated Navigation Areas and Safety Zones, 1625–0022, Application for Tonnage Measurement of Vessels, 1625–0029, Self-propelled Liquefied Gas Vessels, and 1625–0031, Plan Approval and Records for Electrical Engineering Regulations—Title 46 CFR Subchapter J. The sixty-day notice was previously published as an extension. Due to a new instruction sheet added to this collection, this Notice is being submitted as a revision.

Our ICRs describe the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

DATES: Comments must reach the Coast Guard and OIRA on or before July 14, 2011.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2011–0119] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) and/or to OIRA. To avoid duplicate submissions, please use only one of the following means:

(1) *Online:* (a) To Coast Guard docket at *http://www.regulations.gov.* (b) To OIRA by e-mail via: *OIRA-submission@omb.eop.gov.*

(2) *Mail:* (a) DMF (M–30), DOT, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Hand Delivery: To DMF address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* (a) To DMF, 202–493–2251. (b) To OIRA at 202–395–6566. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at *http://www.regulations.gov.*

Copies of the ICRs are available through the docket on the Internet at *http://www.regulations.gov.* Additionally, copies are available from: Commandant (CG–611), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593–7101.

FOR FURTHER INFORMATION CONTACT: Ms. Kenlinishia Tyler, Office of Information Management, telephone 202–475–3652 or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This Notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collections. There is one ICR for each Collection.

The Coast Guard invites comments on whether these ICRs should be granted based on the Collections being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collections; (2) the accuracy of the estimated burden of the Collections; (3) ways to enhance the quality, utility, and clarity of information subject to the Collections; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology. These comments will help OIRA determine whether to approve the ICRs referred to in this Notice.

We encourage you to respond to this request by submitting comments and related materials. Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2011–0119], and must be received by July 14, 2011. We will post all comments received, without change, to *http://www.regulations.gov.* They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number [USCG–2011–0119], indicate the specific section of the document to which each comment applies, providing a reason for each comment. If you submit a comment online (via *http://www.regulations.gov*), it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the DMF. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission.

You may submit comments and material by electronic means, mail, fax, or hand delivery to the DMF at the address under **ADDRESSES**, but please submit them by only one means. To submit your comment online, go to *http://www.regulations.gov,* and type ''USCG–2011–0119'' in the ''Keyword'' box. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this Notice as being available in the docket, go to

http://www.regulations.gov, click on the ''read comments'' box, which will then become highlighted in blue. In the ''Keyword'' box insert ''USCG–2011–0119'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the DMF in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

OIRA posts its decisions on ICRs online at *http://www.reginfo.gov/public/do/PRAMain* after the comment period for each ICR. An OMB Notice of Action on each ICR will become available via a hyperlink in the OMB Control Number: USCG–2011–0119.

Privacy Act

Anyone can search the electronic form of comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act statement regarding Coast Guard public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard has published the 60-day notice (76 FR 15330, March 21, 2011) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

Information Collection Requests

1. *Title:* Security Zones, Regulated Navigation Areas, and Safety Zones.

OMB Control Number: 1625–0020.

Type of Request: Revision of a previously approved collection.

Respondents: Federal, State, and local government agencies, owners and operators of vessels and facilities.

Abstract: The Coast Guard collects this information only when someone seeks a security zone, regulated navigation area, or safety zone. It uses the information to assess the need to establish one of these areas.

Forms: Not applicable.

Burden Estimate: The estimated burden has decreased from 296 hours to 272 hours a year.

2. *Title:* Application for Tonnage Measurement of Vessels.

OMB Control Number: 1625–0022.

Type of Request: Revision of a previously approved collection.

Respondents: Owners of vessels.

Abstract: The information is used by the Coast Guard to help determine a vessel's tonnage. Tonnage in turn helps to determine licensing, inspection, safety requirements, and operating fees.

Forms: CG–5397.

Burden Estimate: The estimated burden has decreased from 33,499 hours to 19,160 hours a year.

3. *Title:* Self-propelled Liquefied Gas Vessels.

OMB Control Number: 1625–0029.

Type of Request: Revision of a previously approved collection.

Respondents: Owners and operators of self-propelled vessels carrying liquefied gas.

Abstract: We need the information sought in this collection, which includes forms CG–4355 and CG–5148, to ensure compliance with our rules for the design and operation of liquefied gas carriers.

Forms: CG–4355, CG–5148.

Burden Estimate: The estimated burden has increased from 6,566 hours to 6,754 hours a year.

4. *Title:* Plan Approval and Records for Electrical Engineering Regulations—Title 46 CFR Subchapter J.

OMB Control Number: 1625–0031.

Type of Request: Revision of a previously approved collection.

Respondents: Owners, operators, shipyards, designers, and manufacturers of vessels.

Abstract: The information sought here is needed to ensure compliance with our rules on electrical engineering for the design and construction of U.S.-flag commercial vessels.

Forms: None.

Burden Estimate: The estimated burden has increased from 3,529 hours to 4,754 hours a year.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: June 3, 2011.

C.A. Mathieu,

Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 2011–14620 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2010–0316]

National Boating Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the National Boating Safety Advisory Council (NBSAC). This Council advises the Secretary of the Department of Homeland Security through the Coast Guard on recreational boating safety regulations and other major boating safety matters.

DATES: Applicants should submit a cover letter and resume in time to reach the Alternate Designated Federal Officer (ADFO) on or before August 15, 2011.

ADDRESSES: Applicants should send their cover letter and resume to the following address: Commandant (CG–5422)/NBSAC, *Attn:* Mr. Jeff Ludwig, U.S. Coast Guard, 2100 Second St., SW., Stop 7581, Washington, DC 20593–7581. You can also call 202–372–1061; or e-mail *jeffrey.a.ludwig@uscg.mil.*

This notice is available in our online docket, USCG–2010–0316, at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Ludwig, ADFO of National Boating Safety Advisory Committee; telephone 202–372–1061; fax 202–372–1908; or e-mail at *jeffrey.a.ludwig @uscg.mil.*

SUPPLEMENTARY INFORMATION: The National Boating Safety Advisory Council (NBSAC) is a Federal advisory committee under 5 U.S.C. App. (Pub. L. 92–463). It was established under authority of 46 U.S.C. 13110 and advises the Secretary of the Department of Homeland Security through the Coast Guard on boating safety regulations and other major boating safety matters. NBSAC has 21 members: Seven representatives of State officials responsible for State boating safety programs, seven representatives of recreational vessel manufacturers and associated equipment manufacturers, and seven representatives of national recreational boating organizations and the general public, at least five of whom are representatives of national recreational boating organizations. Members are appointed by the Secretary.

The Council meets at least twice each year at a location selected by the Coast Guard. It may also meet for extraordinary purposes with the approval of the Designated Federal Officer. Subcommittees or working groups may also meet to consider specific problems.

We will consider applications for seven positions that expire or become vacant on December 31, 2011:

- Three representatives of State officials responsible for State boating safety programs;
- Two representatives of recreational boat and associated equipment manufacturers; and
- Two representatives of national recreational boating organizations.

Applicants are considered for membership on the basis of their particular expertise, knowledge, and experience in recreational boating safety. To be eligible, you should have experience in one of the categories listed above. Registered lobbyists are not eligible to serve on Federal advisory committees. Registered lobbyists are lobbyists required to comply with provisions contained in the Lobbying Disclosure Act of 1995 (Pub. L. 110–81, as amended).

Each member serves for a term of three years. Members may be considered to serve consecutive terms. All members serve at their own expense and receive no salary, or other compensation from the Federal Government. The exception to this policy is when attending NBSAC meetings, members are reimbursed for travel expenses and provided per diem in accordance with Federal Travel Regulations.

In support of the policy of the Coast Guard on gender and ethnic nondiscrimination, we encourage qualified men and women and members of all racial and ethnic groups to apply. The Coast Guard values diversity; all the different characteristics and attributes of persons that enhance the mission of the Coast Guard.

If you are selected as a member drawn from the general public, you will be appointed and serve as a special Government employee (SGE) as defined in section 202(a) of title 18, United States Code. As a candidate for appointment as a SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). A completed OGE Form 450 is not releasable to the public except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a). Only the Designated Agency Ethics Official or his or her designate may release a Confidential Financial Disclosure Report.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Jeff Ludwig, Alternate Designated Federal Officer (ADFO) of NBSAC at Commandant (CG–5422)/NBSAC, U.S. Coast Guard, 2100 Second St., SW., Stop 7581, Washington, DC 20593–7581. Send your cover letter and resume in time for it to be received by the ADFO on or before August 15, 2011. To visit our online docket, go to *http://www.regulations.gov*, enter the docket number for this notice (USCG–2010–0316) in the Search box, and click ''Go.'' Please do not post your resume on this site.

Applicants for the 2010 and 2011 vacancies announced in the **Federal Register** on May 12, 2009, (74 FR 22174) and May 10, 2010, (75 FR 25872) will be considered for the 2011 vacancies and do not need to submit another cover letter or resume. Applicants for years prior to 2010 should submit an updated resume with cover letter to ensure consideration for the vacancies announced in this notice.

Dated: June 1, 2011.

K.S. Cook,

Rear Admiral, U.S. Coast Guard, Director of Prevention Policy.

[FR Doc. 2011–14621 Filed 6–13–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: HRIFA Instructions for Form I–485, Supplement C; Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: HRIFA instructions for Form I–485, Supplement C; OMB Control No. 1615–0024.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 23, 2011, at 76 FR 16436, allowing for a 60-day public comment period. USCIS did not receive any comments for this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 14, 2011. This process is conducted in accordance with 5 CFR 1320.10.

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 Department of Homeland Security (DHS), and to the Office of Management and Budget (OMB) USCIS Desk Officer. Comments may be submitted to: USCIS, Chief, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020. Comments may also be submitted to DHS via facsimile to 202–272–0997 or via e-mail at *rfs.regs@dhs.gov,* and to the OMB USCIS Desk Officer via facsimile at 202–395–5806 or via e-mail at *oira_submission@omb.eop.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0024 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* HRIFA Instructions for Form I–485, Supplement C.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–485, Supplement C; U.S. Citizenship and Immigration Services (USCIS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or Households.* The information provided on the Form I–485 Supplement C, in combination with the information collected on Form I–485 (Application to Register Permanent Resident or Adjust Status), is necessary in order for the U.S. Citizenship and Immigration Services (USCIS) to make a determination that the adjustment of status eligibility requirements and conditions are met by the applicant of Haitian nationality pursuant to HRIFA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 2,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,000 annual burden hours.

If you need a copy of the information collection instrument, please visit the Web site at: *http://www.regulations.gov.*

We may also be contacted at: USCIS, Regulatory Products Division, Office of the Executive Secretariat, 20 Massachusetts Avenue, NW., Washington, DC 20529–2020; Telephone 202–272–8377.

Dated: June 9, 2011.

Sunday Aigbe,

Chief, Regulatory Products Division, Office of the Executive Secretariat, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2011–14696 Filed 6–13–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Agency Information Collection Activities: Application for Waiver of Passport and/or Visa

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0107.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application for Waiver of Passport and/or Visa (DHS Form I–193). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 17426) on March 29, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 14, 2011.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Application for Waiver of Passport and/or Visa.

OMB Number: 1651–0107.

Form Number: DHS Form I–193.

Abstract: The data collected on DHS Form I–193, Application for Waiver of Passport and/or Visa, is used by CBP to determine an applicant's eligibility to enter the United States under 8 CFR parts 211.1(b)(3) and 212.1(g). This form is filed by aliens who wish to waive the documentary requirements for passports and/or visas due to an unforeseen emergency such as an expired passport, or a lost, stolen, or forgotten passport or permanent resident card. This information collected on DHS Form I–193 is authorized by Section 212(a)(7)(B) of the Immigration and Nationality Act. This form is accessible at *http://forms.cbp.gov/pdf/CBP_Form_i193.pdf.*

Current Actions: This submission is being made to extend the expiration date with no change to information collected or to DHS Form I–193.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 25,000.

Estimated Number of Responses per Respondent: 1.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 4,150.

Estimated Total Annual Cost: $14,625,000.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: June 8, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–14607 Filed 6–13–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Automated Clearinghouse

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day notice and request for comments; Extension of an existing information collection: 1651–0078.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Automated Clearinghouse (CBP Form 400). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (76 FR 19121) on April 6, 2011, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before July 14, 2011.

ADDRESSES: Interested persons are invited to submit written comments on

this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–5806.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components 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 collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological techniques or other forms of information.

Title: Automated Clearinghouse.

OMB Number: 1651–0078.

Form Number: CBP Form 400.

Abstract: The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit allows the payer to exercise more control over the payment process. In order to participate in ACH debit, companies must complete CBP Form 400, *ACH Application.* Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is authorized by 19 U.S.C. 1202, and provided for by 19 CFR 24.24 (b). CBP Form 400 is accessible at *http://www.cbp.gov/xp/cgov/toolbox/forms/.*

Current Actions: This submission is being made to extend the expiration date of this information collection with a change to the burden hours due to updated estimates by CBP. There is no change to the information being collected.

Type of Review: Extension (with change).

Affected Public: Businesses.

Estimated Number of Respondents: 1,443.

Estimated Number of Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 2,886.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 240.

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., 5th Floor, Washington, DC 20229–1177, at 202–325–0265.

Dated: June 7, 2011.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2011–14608 Filed 6–13–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5481–N–06]

Notice of Proposed Information Collection; Comment Request, Entitlement and State Community Development Block (CDBG) Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, 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:* August 15, 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: LaRuth Harper, Reports Management Officer, OTAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 7233, Washington, DC 20410; telephone, 202–402–4696 (this is not a toll-free number), or e-mail Ms. Harper at *Laruth.M.Harper@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Regina M. Montgomery at (202) 402–3593 (this is not a toll free number) for copies of the proposed forms and other available documents.

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, 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. The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate.

This Notice also lists the following information:

Title of Proposal(s): Closeout Notice for CDBG Programs.

HUD 7082–Funding Approval Form.

OMB Control Number, if applicable:

Description of the need for the information and proposed use:

Closeout Notice for CDBG Programs

The closeout instructions apply to Community Development Block Grant (CDBG) programs (State CDBG Program, CDBG Disaster Recovery Supplemental Funding, CDBG–Recovery Act (CDBG–R)) and Neighborhood Stabilization Programs (NSP) 1, 2, & 3. Section 570.509 of the CDBG regulations contains the grant closeout criteria for Entitlement jurisdictions when HUD determines, in consultation with the recipients that a grant can be closed. The State CDBG program does not have a regulatory requirement for closeouts but has relied on administrative guidance. This is also true for the NSP, CDBG Disaster Recovery and CDBG–R

programs administrated by the state. States will use the Notice as a vehicle to verify that State CDBG funds have been properly spent before a grant may be officially closed. The HUD field office will prepare and send a closeout package that includes a transmittal letter, grant closeout agreement, grantee closeout certification and a closeout checklist to the grantee via email or standard mail. The information in the closeout package will assist the Department in determining whether all requirements of the contract between the Department and the Grantee have been completed.

The HUD 7082 Funding Approval Form

The Grant Agreement between the Department of Housing and Urban Development (HUD) and the Grantee is made pursuant to the authority of Title I of the Housing and Community Development Act of 1974, as amended, (42 USC 5301 *et seq.*). HUD will make the funding assistance as specified to the grantee upon execution of the Agreement.

Agency for numbers, if applicable: Not applicable

Members of affected public: This information collection applies to all States, Entitlement jurisdictions, Insular Areas, non-entitlement counties in Hawaii and those non-entitlement counties directly funded by NSP 3.

Estimation of the Total Numbers of Hours Needed To Prepare the Information Collection Including Number of Respondent, Frequency of Response, and Hours of Response: The estimated combined number of respondents is 3,077 for the grant closeout task and for the HUD 7082 funding approval form. The proposed frequency of the response to the collection of information is annual to initiate the grant closeout reporting and submission of the funding approval agreement. The total annual reporting for grant closeout is estimated at 2399.34 hours for 1,621 grant recipients. The annual submission of the HUD 7082 funding approval form is estimated at 364 hours for 1,456 grant recipients.

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: May 27, 2011.

Mercedes Márquez,

Assistant Secretary for Community Planning and Development.

GRANT CLOSEOUT

Grant program closeout task	Number of respondents	Annual frequency per response	Burden hours per response	Total burden hours
State				
CDBG States	50	1	3	150
CDBG–R	50	.33	3	49.5
Disaster [1]	10	1	3	30
NSP [2]	51	1	3	153
States Total	161	3.33	12	382.5
Nonentitlement Counties in Hawaii				
CDBG–R	3	.33	3	2.97
Counties in Hawaii Total	3	.33	3	2.97
Entitlement Jurisdictions				
NSP [2]	288	1	3	864
CDBG–R	1110	.33	3	1098.9
Entitlement Total	1398	1.33	6	1962.9
Nonentitlement Direct Grantees				
NSP–3	31	.25	3	23.25
Nonentitlement Total	31	.25	3	23.25
Non-Profit and Quasi-Public Direct Grantees Responsibilities				
NSP–2	20	.33	3	19.8
Non-Profits and Quasi-Public Total	20	.33	3	19.8
Insular Areas				
NSP–1	4	.33	3	3.96
CDBG–R	4	.33	3	3.96
Insular Area Total	8	.66	6	7.92
Grant Closeout Total	1,621	6.23	33	2399.34

[1] Disaster recovery funds are contingent upon if the President declared a major disaster and Congress provided a supplemental appropriation.
[2] NSP includes 1, 2, & 3 unless otherwise specified.

FUNDING APPROVAL/AGREEMENT 7082 FORM

Funding approval/agreement form for grant programs	Number of respondents	Annual frequency per response	Burden hours per response	Total burden hours
State				
CDBG State	50	1	.25	12.5
Disaster [1]	10	1	.25	2.5
NSP–3	51	1	.25	12.75
State Total	111	3	.75	27.75
Nonentitlement Counties in Hawaii				
CDBG	3	1	.25	.75
Counties in Hawaii Total	3	1	.25	.75
Entitlement Jurisdictions				
CDBG	1,110	1	.25	277.5
NSP–3	197	1	.25	49.25
Entitlement Total	1307	2	.50	326.75
Nonentitlement Direct Grantees				
NSP–3	31	1	.25	7.75
Nonentitlement Direct Grantees Total	31	1	.25	7.75
Insular Areas				
CDBG	4	1	.25	1.0
Insular Area Total	4	1	.25	1.0
Funding Approval Total	1,456	8	2.0	364

[1] Disaster recovery funds are contingent upon if the President declared a major disaster and Congress provided a supplemental appropriation.

[FR Doc. 2011–14600 Filed 6–13–11; 8:45 am]
BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–49]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request; Notice of Funding Availability (NOFA) for Fiscal Year 2010 Limited English Proficiency Initiative (LEPI) Program; Notice of Proposed Information Collection for Public Comment

AGENCY: Office of the Chief Information Officer.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 28, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 days from the date of this Notice. Comments should refer to the proposal by name (or OMB approval number) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: oir__submission@omb.eop.gov; fax:* 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street, SW., Washington, DC 20410; e-mail *colette.pollard@hud.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from the Reports Management Officer.

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, as described below. The purpose of the LEPI NOFA is to help ensure limited English proficient (LEP) communities have access to information in their native languages on HUD programs, services, and activities. In coordination with local HUD grantees, successful applicants will develop and conduct, workshops, training sessions, and/or disseminate LEP material to the targeted LEP communities. LEP individuals are persons who do not speak English as their primary language and who have a limited ability to read, write, speak, or understand English. Examples of groups likely to include LEP individuals who are encountered and served by HUD grantees include, but are not limited to: (1) Individuals who are seeking housing assistance from a public housing agency or assisted housing provider; (2) individuals seeking assistance for lead-based paint removal or abatement; (3) individuals seeking general fair housing information or information on how to file a housing discrimination complaint, housing-related training, social services, or any other assistance from HUD grantees. HUD programs include, but are not limited to HUD's Offices of Public

and Indian Housing, Community Planning and Development, Sustainable Housing and Communities, Fair Housing and Equal Opportunity, Policy Development and Research, Housing, and Healthy Homes and Lead Hazard Control. For additional information, refer to the User's Guide to HUD Programs at: *http://archives.hud.gov/funding/2009/snuserguide.pdf*. LEP communities are groups of LEP individuals sharing a common language that are located within the intended area to be served and comprise part of the community intended to be served by HUD grantees. The objectives of the LEPI NOFA are to: (1) Identify and meet the needs of the targeted LEP communities; (2) improve the participation of LEP individuals in HUD programs, services, and activities beyond the 12-month grant period; and (3) enhance the dissemination and communication of HUD programs, services, and activities in languages targeted to meet the needs of local communities.

This Notice also lists the following information:

Title of Proposal: Notice of Funding Availability (NOFA) for Fiscal Year 2010 Limited English Proficiency Initiative (LEPI) Program.

Description of Information Collection: The purpose of the LEPI NOFA is to provide direct services to LEP individuals by providing information on accessing HUD programs, services, and activities in languages native to the targeted LEP communities, in coordination with local HUD grantees.

OMB Control Number: 2529–Pending.

Agency Form Numbers: HUD forms have been identified in the Department's General Section.

Members of Affected Public: Qualified non-profit or faith-based community organizations that have engaged in providing LEP services to diverse populations and communities.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Responses, and Hours of Response: Estimation of the total number of hours needed to prepare the information collection is 30. On an annual basis approximately 30 respondents (applicants) will submit one (1) Application to HUD with a burden hour per response of 70 hours. It is estimated that 2 hours for the quarterly reporting period will be required of the recipients to fulfill HUD reporting requirements, for a total of 2,132 burden hours.

Status of the Proposed Information Collection: Proposed new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 7, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–14601 Filed 6–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5481–N–08]

Notice of Proposed Information Collection for Public Comment; Continuum of Care Check-up Assessment Tool

AGENCY: U.S. Department of Housing and Urban Development (HUD), Office of the Assistant Secretary for Community Planning and Development.

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ACTION: Notice of proposed information collection.

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:* August 15, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Colette Pollard, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4160, Washington, DC 20410–5000; telephone (202) 402–3400, (this is not a toll-free number) or e-mail Ms. Pollard at *Colette_Pollard@hud.gov* for a copy of proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Ann Marie Oliva, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1590 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit 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 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: Continuum of Care Check-up Assessment Tool.

Description of the need for the information proposed: The CoC Check-up Tool will enhance CoCs awareness of their functional capacity to assume the new responsibilities outlined in the McKinney-Vento Act, as amended by HEARTH. Communities will self-identify and prioritize areas where capacity improvement is needed. HUD will garner information to assess and direct technical assistance needs, prepare for training conferences, develop sample tools and templates, guidebooks, white papers, webinars, FAQs, and staff the Virtual Help Desk to best help communities plan their transition.

Agency Form Numbers

Members of the affected public: Continuum of Care lead persons, HMIS administrators, ESG grantee lead persons, and select grantees under the current CoC competitive grants (The Supportive Housing Program [SHP], Shelter Plus Care [S+C], and the Section 8 Moderate Rehabilitation for the Single Room Occupancy [SRO] Program), ESG grants, and HPRP grants.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 450 CoC respondents × 8 respondents per CoC = 3,600 respondents. 3,600 respondents × 90 minutes per response = 324,000 total minutes or 5,400 hours.

Status of proposed information collection: New Collection

Authority: Section 3506 of the Paperwork Reduction act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 8, 2011.

Clifford D. Taffet,

General Deputy Assistant Secretary for Community Planning and Development.

[FR Doc. 2011–14724 Filed 6–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5480–N–50]

Notice of Submission of Proposed Information Collection to OMB, Emergency Comment Request; Communities Challenge Planning Grant

AGENCY: HUD's, Office of Sustainable Housing and Communities.

ACTION: Notice of proposed information collection.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal. This data collection is for applications received under the community Challenge Planning Grants Notice of Funding Availability.

DATES: *Comments Due Date: June 28, 2011.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within 14 days from the date of this Notice. Comments should refer to the proposal by name/or OMB approval number (2501–0025) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *e-mail: oir submission @omb.eop.gov; fax:* 202–395–3086.

FOR FURTHER INFORMATION CONTACT: Reports Management Officer, QDAM, Department of Housing and Urban Development, 4517th Street, SW., Washington, DC 20410; e-mail *colette.pollard@hud.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from the Reports Management Officer.

SUPPLEMENTARY INFORMATION: 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: Communities Challenge Planning Grant.

OMB Control Number: 2501–0025.

Agency Form Numbers: (a) Form SF–424—Application for Federal Assistance.

(b) SF–424 Supplement Survey on Equal Opportunity for Applicants (''Faith Based EEO Survey (SF–424 SUPP)'' on *Grants.gov*) (optional submission).

(c) HUD–424 CBW, HUD Detailed Budget Worksheet, (Include Total Budget (Federal Share and Matching) and Budget Justification Narrative.

(d) Form HUD 2880—Applicant/Recipient Disclosure/Update Report (''HUD Applicant Recipient Disclosure Report'' on *Grants.gov*).

(e) Form SF–LLL—Disclosure of Lobbying Activities (if applicable).

(f) Form HUD 96011—Third Party Documentation Facsimile Transmittal (''Facsimile Transmittal Form'' on *Grants.gov*) (Used as the cover page to transmit third party documents and other information designed for each specific 4 application for tracking purposes. HUD will not read faxes that do not use the HUD–96011 as the cover page to the fax.)

Description of Information Collection:

The Department of Defense and Full-Year Continuing Appropriations Act, 2011 (Pub. L. 112–10, approved April 15, 2011) (Appropriations Act), provided $30,000,000 for HUD's Community Challenge Planning Grant Program.

HUD's $30 million Community Challenge Planning Grant Program will foster reform and reduce barriers to achieving affordable, economically vital, and sustainable communities. Such efforts may include amending or replacing local master plans, zoning codes, and building codes, either on a jurisdiction wide basis or in a specific neighborhood, district, corridor, or sector to promote mixed-use development, affordable housing, the reuse of older buildings and structures for new purposes, and similar activities with the goal of promoting sustainability at the local or neighborhood level. HUD's Community Challenge Planning Grant Program also supports the development of affordable housing through the development and adoption of inclusionary zoning ordinances and other activities such as acquisition of land for affordable housing projects.

In fiscal year 2010 a joint Notice of Funding Availability was issued for HUD's Community Challenge Planning Grant program and DOT's TIGER II Planning Grant program, as a result both agencies successfully awarded 14 joint grants. This fiscal year DOT did not receive transportation planning funds as part of the National Infrastructure Investments program therefore a joint NOFA will not be issued.

Members of Affected Public: State, Local Government and Non-profit organization.

Estimation of the Total Numbers of Hours Needed to Prepare the Information Collection Including Number of Respondents, Frequency of Responses, and Hours of Response:

The estimated number of respondents is 600 and the number of responses is 1. There will be in total, approximately 900 total responses. The total reporting burden is 1800 hours.

Status of the Proposed Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: June 7, 2011.

Colette Pollard,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 2011–14602 Filed 6–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5553–D–01]

Delegation of Authority to the Chief Operating Officer

AGENCY: Office of the Deputy Secretary, U.S. Department of Housing and Urban Development (HUD).

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Deputy Secretary delegates to the Chief Operating Officer all management and supervisory authority for the following offices: the Chief Information Officer

(CIO); the Chief Human Capital Officer (CHCO); the Chief Procurement Officer (CPO); the Director of Field Policy Management (FPM); the Director of the Office of Strategic Planning and Management; and the Chief Disaster and National Security Officer.

DATES: *Effective Date:* April 15, 2011.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Reynolds, Assistant General Counsel for Administrative Law, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW., Room 9256, Washington, DC 20410–0500, telephone number 202–402–3502. (This is not a toll-free number.) Individuals with speech or hearing impairments may access this number through TTY by calling 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Certain management and program functions previously performed by an Assistant Secretary for Administration will now be performed by a Chief Operating Officer (COO). These functions include executive scheduling, field administrative resources, security and emergency planning, grants management and oversight, executive secretariat, Freedom of Information Act processing, budgeting, accounting, hiring and training employees, modernizing information technology systems, information security, protecting privacy, procurement and contracting, strategic planning, disaster preparedness operations, and field policy and management. These function are performed in the offices of the Chief Human Capital Officer (CHCO), the Chief Information Officer (CIO), the Chief Procurement Officer (CPO), Director of Field Policy Management, Chief Disaster and National Security Officer, and the Director of Strategic Planning and Management. The COO has been delegated management and program authority for these offices. Additionally, the Chief Financial Officer (CFO) Reports to the Chief Operating Officer.

Section A. Authority

The Deputy Secretary of Housing and Urban Development hereby delegates to the Chief Operating Officer authority to manage and supervise the following offices and functions:

1. Office of the Chief Human Capital Officer: This office is responsible for employee performance management; executive resources; human capital field support; human capital policy, planning and training; facilities management services; recruitment and staffing; personnel security; employee assistance program, health and wellness; employee and labor relations; pay, benefits and retirement center; human capital information systems; budget; Executive Secretariat correspondence management; and processing of Freedom of Information Act requests.

2. Office of the Chief Information Officer: This office is responsible for modernizing information technology systems, information security, and protecting privacy.

3. Office of the Chief Procurement Officer: This office is responsible for all procurement and contracting activity by the Department.

4. Office of the Director of Field Policy Management: This office provides direction and oversight for Regional and Field Office Directors.

5. Office of the Chief Disaster and National Security Officer: This office is responsible for the Department's disaster response and recovery programs.

6. Office of Strategic Planning and Management: This office is responsible for the Department's strategic planning, and performance management and measurement.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued or to issue or waive regulations.

Section C. Authority to Redelegate

The Chief Operating Officer may redelegate to employees of HUD any of the authority delegated under Section A above.

Section D. Authority Superseded

This delegation revokes all previous delegations of authority from the Secretary or the Deputy Secretary to the Assistant Secretary for Administration.

Authority: Section 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d)

Dated: April 15, 2011.

Ron Sims,

Deputy Secretary.

[FR Doc. 2011–14599 Filed 6–13–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N068; 96300–1671–0000 FY11–R4]

Species Proposals for Consideration at the Sixteenth Regular Meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We invite you to provide us with information and recommendations on animal and plant species that should be considered as candidates for U.S. proposals to amend Appendices I and II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) at the upcoming sixteenth meeting of the Conference of the Parties (CoP16). Such amendments may concern the addition of species to Appendix I or II, the transfer of species from one Appendix to another, or the removal of species from Appendix II. Finally, with this notice, we also describe the U.S. approach to preparations for CoP16. We will publish a second **Federal Register** notice to solicit information and recommendations on possible resolutions, decisions, and agenda items for discussion at CoP16 and to provide information on how to request approved observer status.

DATES: We will consider all information and comments we receive on or before August 15, 2011.

ADDRESSES: Send correspondence pertaining to species proposals to the Division of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Room 110; Arlington, VA 22203; or via e-mail to: *CoP16species@fws.gov.* Comments and materials we receive pertaining to species proposals will be available for public inspection, by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Division of Scientific Authority.

FOR FURTHER INFORMATION CONTACT: Rosemarie Gnam, Chief, Division of Scientific Authority; phone 703–358–1708; fax 703–358–2276; *e-mail: scientificauthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild

Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to regulate international trade in certain animal and plant species that are now, or potentially may become, threatened with extinction. These species are listed in the Appendices to CITES, which are available on the CITES Secretariat's Web site at *http://www.cites.org/eng/app/index.shtml.*

Currently, 175 countries, including the United States, are Parties to CITES. The Convention calls for regular biennial meetings of the Conference of the Parties, unless the Conference decides otherwise. At these meetings, the Parties review the implementation of CITES, make provisions enabling the CITES Secretariat in Switzerland to carry out its functions, consider amendments to the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of CITES. Any country that is a Party to CITES may propose amendments to Appendices I and II, resolutions, decisions, and agenda items for consideration by all the Parties at the meeting.

This is our first in a series of **Federal Register** notices that, together with an announced public meeting, provide you with an opportunity to participate in the development of the U.S. submissions to and negotiating positions for the sixteenth regular meeting of the Conference of the Parties to CITES (CoP16). Our regulations governing this public process are found in Title 50 of the Code of Federal Regulations (CFR) at § 23.87.

Announcement of the Sixteenth Meeting of the Conference of the Parties

We hereby notify you of the convening of CoP16, which is tentatively scheduled to be held in Pattaya, Thailand, in March 2013.

U.S. Approach for CoP16

What are the priorities for U.S. submissions to CoP16?

Priorities for U.S. submissions to CoP16 continue to be consistent with the overall objective of U.S. participation in the Convention: to maximize the effectiveness of the Convention in the conservation and sustainable use of species subject to international trade. With this in mind, we plan to consider the following factors in determining what issues to submit for inclusion in the agenda at CoP16:

(1) *Does the proposed action address a serious wildlife or plant trade issue that the United States is experiencing as a range country for species in trade?* Since our primary responsibility is the conservation of our domestic wildlife resources, we will give native species the highest priority. We will place particular emphasis on terrestrial and freshwater species with the majority of their range in the United States and its territories that are or may be traded in significant numbers; marine species that occur in U.S. waters or for which the United States is a major trader; and threatened and endangered species for which we and other Federal and State agencies already have statutory responsibility for protection and recovery. We also consider CITES listings as a proactive measure to monitor and manage trade in native species to preclude the need for the application of stricter measures, such as listing under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), or inclusion in CITES Appendix I.

(2) *Does the proposed action address a serious wildlife or plant trade issue for species not native to the United States?* As a major importer of wildlife, plants, and their products, the United States has taken responsibility, by working in close consultation with range countries, for addressing cases of potential over-exploitation of foreign species in the wild. In some cases, the United States may not be a range country or a significant trading country for a species, but we will work closely with other countries to conserve species being threatened by unsustainable exploitation for international trade. We will consider CITES listings for species not native to the United States if those listings will assist in addressing cases of known or potential over-exploitation of foreign species in the wild, and in preventing illegal, unregulated trade, especially if the United States is a major importer. These species will be prioritized based on the extent of trade and status of the species, and also the role the species play in the ecosystem, with emphasis on those species for which a CITES listing would offer the greatest conservation benefits to the species, associated species, and their habitats.

(3) *Does the proposed action provide additional conservation benefit for a species already covered by another international agreement?* The United States will consider the listing of such a species under CITES when it would enhance the conservation of the species by ensuring that international trade is effectively regulated and not detrimental to the survival of the species.

Request for Information and Recommendations for Amending Appendices I or II

The purpose of this notice is to solicit information and recommendations that will help us identify species that the United States should propose for addition to, removal from, or reclassification in the CITES Appendices, or to identify issues warranting attention by the CITES specialists on zoological and botanical nomenclature. This request is not limited to species occurring in the United States. Any Party may submit proposals concerning animal or plant species occurring in the wild anywhere in the world. We encourage the submission of information on any species for possible inclusion in the Appendices if these species are subject to international trade that is, or may become, detrimental to the survival of the species. We also encourage you to keep in mind the U.S. approach to CoP16, described above in this notice, when considering what species the United States should propose for inclusion in the Appendices.

We are not necessarily requesting complete proposals, but they are always welcome. However, we are asking you to submit convincing information describing: (1) The status of the species, especially trend information; (2) conservation and management programs for the species, including the effectiveness of enforcement efforts; and (3) the level of international as well as domestic trade in the species, especially trend information. You may also provide any other relevant information, and we appreciate receiving a list of references.

The term ''species'' is defined in CITES as ''any species, subspecies, or geographically separate population thereof.'' Each species for which trade is controlled under CITES is included in one of three Appendices, either as a separate listing or incorporated within the listing of a higher taxon. The basic standards for inclusion of species in the Appendices are contained in Article II of CITES (text of the Convention is on the CITES Secretariat's Web site at *http://www.cites.org/eng/disc/text.shtml*). Appendix I includes species threatened with extinction that are or may be affected by trade. Appendix II includes species that, although not necessarily now threatened with extinction, may become so unless trade in them is strictly controlled. Appendix II also lists species that must be subject to regulation in order that trade in other CITES-listed species may be brought under effective control. Such listings

usually are necessary because of difficulty inspectors have at ports of entry or exit in distinguishing one species from other species. Because Appendix III only includes species that any Party may list unilaterally, we are not seeking input on possible U.S. Appendix-III listings with this notice, and we will not consider or respond to comments received concerning Appendix-III listings.

CITES specifies that international trade in any readily recognizable parts or derivatives of animals listed in Appendices I or II, or plants listed in Appendix I, is subject to the same conditions that apply to trade in the whole organisms. With certain standard exclusions formally approved by the Parties, the same applies to the readily recognizable parts and derivatives of most plant species listed in Appendix II. Parts and derivatives often not included (i.e., not regulated) for Appendix-II plants are: Seeds, spores, pollen (including pollinia), and seedlings or tissue cultures obtained in vitro and transported in sterile containers. You may refer to the CITES Appendices on the Secretariat's Web site at *http://www.cites.org/eng/app/index.shtml* for further exceptions and limitations. In 1994, the CITES Parties adopted criteria for inclusion of species in Appendices I and II (in Resolution Conf. 9.24 (Rev. CoP15)). These criteria apply to all listing proposals and are available from the CITES Secretariat's Web site at *http://www.cites.org/eng/res/index.shtml* or upon request from the Division of Scientific Authority at the address listed under **ADDRESSES**. Resolution Conf. 9.24 (Rev. CoP15) also provides a format for proposals to amend the Appendices.

What Information Should be Submitted?

In response to this notice, to provide us with information and recommendations on species subject to international trade for possible proposals to amend the Appendices, please include as much of the following information as possible in your submission:

(1) Scientific name and common name;

(2) Population size estimates (including references if available);

(3) Population trend information;

(4) Threats to the species (other than trade);

(5) The level or trend of international trade (as specific as possible but without a request for new searches of our records);

(6) The level or trend in total take from the wild (as specific as reasonable); and

(7) A short summary statement clearly presenting the rationale for inclusion in or removal or transfer from one of the Appendices, including which of the criteria in Resolution Conf. 9.24 (Rev. CoP15) are met.

If you wish to submit more complete proposals for us to consider, please consult Resolution Conf. 9.24 (Rev. CoP15) for the format for proposals and a detailed explanation of each of the categories. Proposals to transfer a species from Appendix I to Appendix II or to remove a species from Appendix II must also be in accordance with the precautionary measures described in Annex 4 of Resolution Conf. 9.24 (Rev. CoP15).

What Will We Do With the Information We Receive?

The information that you submit will help us decide if we should submit or co-sponsor with other Parties a proposal to amend the CITES Appendices. However, there may be species that qualify for CITES listing but for which we may decide not to submit a proposal to CoP16. Our decision will be based on a number of factors, including available scientific and trade information; whether or not the species is native to the United States; and for foreign species, whether or not a proposal is supported or co-sponsored by at least one range country for the species. These factors and others are included in the U.S. approach to CoP16, described above in this notice. We will carefully consider all factors of the U.S. approach when deciding which species the United States should propose for inclusion in the Appendices.

We will consult range countries for foreign species, and for species we share with other countries, after receiving and analyzing the information provided by the public in response to this notice as well as other information available to us.

One important function of the CITES Scientific Authority of each Party country is monitoring the international trade in plant and animal species, and ongoing scientific assessments of the impact of that trade on species. For native U.S. species listed in Appendices I and II, we monitor trade and export permits authorized so that we can prevent over-utilization and restrict exports if necessary. We also work closely with the States to ensure that species are correctly listed in the CITES Appendices (or not listed, if a listing is not warranted). For these reasons, we actively seek information about U.S. and foreign species subject to international trade.

Future Actions

As stated above, the next regular meeting of the Conference of the Parties (CoP16) is tentatively scheduled to be held in Pattaya, Thailand, in March 2013. The United States must submit any proposals to amend Appendix I or II, or any draft resolutions, decisions, or agenda items for discussion at CoP16, to the CITES Secretariat 150 days (tentatively early October 2012) prior to the start of the meeting. In order to meet this deadline and to prepare for CoP16, we have developed a tentative U.S. schedule. We plan to publish a **Federal Register** notice approximately 15 months prior to CoP16; in that notice, we intend to request potential resolutions, decisions, and agenda items for discussion at CoP16, and to announce tentative species proposals the United States is considering submitting for CoP16 and solicit further information and comments on them.

Approximately 9 months prior to CoP16, we plan to publish a **Federal Register** notice announcing proposed resolutions, decisions, and agenda items the United States is considering submitting for CoP16.

Approximately 4 months prior to CoP16, we will post on our website an announcement of the species proposals, draft resolutions, draft decisions, and agenda items submitted by the United States to the CITES Secretariat for consideration at CoP16.

Through a series of additional notices and website postings in advance of CoP16, we will inform you about preliminary negotiating positions on resolutions, decisions, and amendments to the Appendices proposed by other Parties for consideration at CoP16, and about how to obtain observer status from us. We will also publish an announcement of a public meeting tentatively to be held approximately 3 months prior to CoP16; that meeting will enable us to receive public input on our positions regarding CoP16 issues. The procedures for developing U.S. documents and negotiating positions for a meeting of the Conference of the Parties to CITES are outlined in 50 CFR 23.87. As noted, we may modify or suspend the procedures outlined there if they would interfere with the timely or appropriate development of documents for submission to the CoP and of U.S. negotiating positions.

Author

The primary author of this notice is Patricia Ford, Division of Scientific Authority, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 16, 2011.

Rowan W. Gould,

Acting Director.

[FR Doc. 2011–14605 Filed 6–13–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAZ956000.L14200000.BJ0000.241A]

Notice of Filing of Plats of Survey; AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of survey; Arizona.

SUMMARY: The plat of survey as described below is scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, thirty (30) days after the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: The plat will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona 85004–4427; phone 602–417–9200. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona: The plat representing the dependent resurvey of portions of Mineral Survey No. 1785, in sections 32 and 33, Township 12 ½ North, Range 1 West, accepted May 24, 2011, for Group 1071, Arizona.

This plat was prepared at the request of the United States Forest Service.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

Danny A. West,

Chief Cadastral Surveyor of Arizona.

[FR Doc. 2011–14635 Filed 6–13–11; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Second Review)]

Ammonium Nitrate From Russia; Scheduling of an expedited five-year review concerning the antidumping duty order on ammonium nitrate From Russia

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on ammonium nitrate from Russia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Amy Sherman (202–205–3289), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On June 6, 2011, the Commission determined that the domestic interested party group response to its notice of institution (76 FR 11273, March 1, 2011) of the subject five-year review was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report. A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 30, 2011, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions. As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 6, 2011 and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 6, 2011. However, should the Department of Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's Web site.

[2] The Commission has found the responses submitted by the Committee for Fair Ammonium Nitrate Trade ("COFANT") and its individual members, CF Industries, Inc. and El Dorado Chemical Co. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: June 8, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–14582 Filed 6–13–11; 8:45 am]

BILLING CODE 7020–02–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (a portion of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on July 7 and July 8, 2011.

DATES: Thursday, July 7, 2011, from 9 a.m. to 5 p.m., and Friday, July 8, 2011, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in at the Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC on Thursday, July 7, 2011, from 9 a.m. to 5 p.m., and Friday, July 8, 2011, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2011 Basic (EA–1) and Pension (EA–2B) Joint Board Examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2011 Pension (EA–2A) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the May 2011 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on July 8 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 30, 2011, to 202–622–8300, *Attn:* Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, *Attn:* Executive Director SE:OPR, Room 7238, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: June 8, 2011.

Patrick W. McDonough,

Executive Director. Joint Board for the Enrollment of Actuaries.

[FR Doc. 2011–14619 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States et al. v. Comcast Corp., et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the comments received on the proposed Final Judgment in *United States et al.* v. *Comcast Corp. et al.*, Civil Action No. 1:11–CV–00106–RJL, which were filed in the United States District Court for the District of Columbia on June 6, 2011, together with the response of the United States to the comments.

Copies of the comments and the response are available for inspection at the Department of Justice Antitrust Division, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Patricia A. Brink,

Director of Civil Enforcement.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF FLORIDA, STATE OF MISSOURI,
STATE OF TEXAS, and STATE OF WASHINGTON,

Plaintiffs,

v.

COMCAST CORP., GENERAL ELECTRIC CO., and NBC UNIVERSAL, INC.,
Defendants.

CASE: 1:11–cv–00106
JUDGE: Leon, Richard J.

PLAINTIFF UNITED STATES'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h) (''APPA'' or ''Tunney Act''), the United States hereby files the public comments concerning the proposed Final Judgment in this case and the United States's response to those comments. After careful consideration of the comments, the United States continues to believe that the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint. The United States will move the Court, pursuant to 15 U.S.C. § 16(b)–(h), to enter the proposed Final Judgment after the public comments and this Response have been published in the Federal Register pursuant to 15 U.S.C. § 16(d).

I. PROCEDURAL HISTORY

On January 18, 2011, the United States and the States of California, Florida, Missouri, Texas, and Washington (''the States''), filed a Complaint in this matter, alleging that the formation of a Joint Venture (''JV'') among Comcast Corporation (''Comcast''), General Electric Company (''GE''), NBC Universal, Inc. (''NBCU''), and Navy, LLC, which gives Comcast majority control over the NBC broadcast and NBCU cable networks, would substantially lessen competition in the market for timely distribution of professional, full-length video programming to residential consumers in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. Simultaneously with its filing of the Complaint, the United States filed a Competitive Impact Statement (''CIS''), a proposed Final Judgment, and a Stipulation and Order signed by the United States and the Defendants consenting to entry of the proposed Final Judgment after compliance with the requirements of the APPA.

The proposed Final Judgment and CIS were published in the Federal Register on January 31, 2011. See 76 Fed. Reg. 5,440 (2011). A summary of the terms of the proposed Final Judgment and CIS, together with directions for the submission of written comments relating to the proposed Final Judgment, were published in The Washington Post for seven days, from January 31, 2011 through February 7, 2011. The Defendants filed the statement required by 15 U.S.C. § 16(g) on April 18, 2011. The 60-day period for public comments ended on April 9, 2011, and eight comments were received as described below and attached hereto, including a comment from The American Antitrust Institute (''AAI''), a joint comment from The Consumers Federation of America and Consumers Union (''CFA/CU''), and six comments from individuals.

II. THE INVESTIGATION AND PROPOSED RESOLUTION

A. Investigation

On December 3, 2009, Comcast, GE, NBCU and Navy LLC, entered into an agreement to form a JV to which Comcast and GE contributed their cable and broadcast networks, as well as NBCU's interest in Hulu, LLC. Over the next 13 months, the United States Department of Justice (''Department'') conducted a thorough and comprehensive investigation of the potential impact of the JV on the video programming distribution industry. The Department interviewed more than 125 companies and individuals involved in the industry, obtained testimony from Defendants' officers, required Defendants to provide the Department with responses to numerous questions, reviewed over one million business documents from Defendants' officers and employees, obtained and reviewed tens of thousands of third-party documents, obtained and extensively analyzed large volumes of industry financial and economic data, consulted with industry and economic experts, organized product demonstrations, and conducted independent industry research. The Department also consulted extensively with the Federal Communications Commission (''FCC'') to ensure that the agencies conducted their reviews in a coordinated and complementary fashion and created remedies that were both comprehensive and consistent. As part of its investigation, the Department also reviewed and considered many of the thousands of pages of comments filed in the FCC docket in this matter that raised competition issues, including but not limited to the comments filed by AAI and CFA/CU.[1]

B. Proposed Final Judgment

The proposed Final Judgment is designed to preserve competition in the market for timely distribution of professional full-length video programming to residential consumers in the United States. The proposed Final Judgment accomplishes this in a number of ways. First, the proposed Final Judgment requires the JV to license its broadcast, cable, and film content to online video distributors (''OVDs'') on terms comparable to those contained in similar licensing arrangements with traditional multichannel video programming distributors (''MVPDs'') or OVDs. It provides two options through which an OVD may be able to obtain the JV's content. The first option, set forth in Section IV.A of the proposed Final Judgment, requires the JV to license the linear feeds of the JV's video programming to OVDs on terms that are economically equivalent to the terms contained in certain MVPDs' video programming agreements. The second option, set forth in Section IV.B of the proposed Final Judgment, requires the JV to license to a qualified OVD the broadcast, cable, or film content of the JV that is comparable in scope and quality to the content the OVD receives from one of the JV's defined programming peers.[2] While the first option ensures that Comcast, through the JV, will not disadvantage OVD competitors in relation to MVPDs, the second option ensures that the programming licensed by the JV to OVDs will reflect the licensing trends of its peers as the industry evolves. If an OVD and the JV are unable to reach an agreement for carriage of programming under either of these options, the OVD may apply to the Department to submit the dispute to baseball-style arbitration pursuant to Section VII of the proposed Final Judgment.[3]

Second, the proposed Final Judgment alters the JV's relationship with Hulu, LLC (''Hulu''), an OVD in which the JV owns a 32 percent interest. Hulu is one of the most successful OVDs to date. Section V.D of the proposed Final Judgment requires the Defendants to relinquish their voting and other governance rights in Hulu, and Section IV.E prohibits them from receiving confidential or competitively sensitive information concerning Hulu. At the same time, Section V.G of the proposed Final Judgment seeks to ensure that the JV continues to honor its commitments to supply programming to Hulu at levels commensurate with the supply of content provided to Hulu by its other media partners.

Third, the proposed Final Judgment prohibits Defendants from engaging in certain conduct that could prevent OVDs or MVPDs from competing effectively. Section V.A of the proposed Final Judgment prohibits Defendants from discriminating against, retaliating against, or punishing any content provider for providing programming to any OVD or MVPD. Section V.A also prohibits Defendants from discriminating against, retaliating against, or punishing any OVD or MVPD for obtaining video programming, for invoking any provisions of the proposed Final Judgment or any FCC rule or order, or for furnishing information to the Department concerning Defendants' compliance with the proposed Final Judgment.

Fourth, the proposed Final Judgment further protects the development of OVDs by preventing Comcast from using its position as the nation's largest MVPD or as the licensor, through the JV, of important video programming, to enter into agreements containing restrictive contracting terms. Sections V.B and V.0 of the proposed Final Judgment set forth broad prohibitions on restrictive contracting practices, including exclusives, with appropriately tailored exceptions. In so doing, the proposed Final Judgment strikes a balance between allowing reasonable and customary exclusivity provisions that enhance competition while prohibiting provisions that, without offsetting procompetitive benefits, hinder the development of effective competition from OVDs.

Fifth, Section V.G requires Comcast to abide by certain restrictions on the operation and management of its Internet facilities, which OVDs depend upon in order to deliver video content to OVD customers. Absent such restrictions, Comcast would have the incentive and ability to undermine the

[1] See, e.g., Comments of the American Antitrust Institute, in re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, FCC MB Docket No. 10–56 (June 21, 2010) (''AAI's FCC Comments''); Reply to Opposition of Free Press, Media Access Project, Consumer Federation of America, and Consumer's Union, In re Applications of Comcast Corporation, General Electric Company, and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, FCC MB Docket No. 10–56 (Aug. 19, 2010).

[2] The programming peers include the owners of the three major non-NBC broadcast networks (CBS, FOX, and ABC), the largest cable network groups (including News Corporation, Time Warner, Inc., Viacom, Inc., and The Walt Disney Company), and the six largest production studios (including News Corp., Viacom, Sony Corporation of America, Time Warner, and Disney).

[3] ''Baseball-style'' arbitration is a method of alternative dispute resolution in which each party submits its preferred price and other terms, and the arbitrator selects the proposal that is most reasonable and fair in light of the relevant market. The arbitrator must choose one party's proposal or the other's, with no option to implement a different set of price and other terms, e.g., a compromise involving aspects of both. The name is derived from arbitrations of Major League Baseball player salary disputes in which this format has been employed for a number of years. The FCC has also adopted this format as part of the conditions set forth in several merger orders. See, e.g., Memorandum Opinion and Order, In re General Motors Corporation and Hughes Electronics Corporation, Transferors, and The News Corporation Limited, Transferee, for Authority to Transfer Control, 19 F.C.C.R. 473,¶ 222 (rel. Jan. 14, 2004), available at *http://hraunfoss.fcc.goviedocs_publiclattachmatchIFCC-03-330A1.pdf.*

effectiveness of the proposed Final Judgment by, for instance, giving priority to non-OVD traffic on its network, thus adversely affecting the quality of OVD services that compete with Comcast's OVD or MVPD services.

Finally, Sections IV.I–0 and VIII.A–B of the proposed Final Judgment impose reporting and document retention requirements on the Defendants to better enable the Department to monitor compliance and to assist it in enforcement proceedings.

III. STANDARD OF JUDICIAL REVIEW

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination in accordance with the statute, the court is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A)–(B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' United States v. Microsoft Corp., 56 F.3d 1448, 1461 (D.C. Cir. 1995). See generally United States v. SBC Commc'ns, Inc., 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); United States v. InBev N.V./S.A., 2009–2 Trade Cas. (CCH) ¶ 76,736, No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanisms to enforce the Final Judgment are clear and manageable'').

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA, a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See Microsoft, 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' United States v. BNS, Inc., 858 F.2d 456, 462 (9th Cir. 1988) (citing United States v. Bechtel Corp., 648 F.2d 660, 666 (9th Cir. 1981)); see also Microsoft, 56 F.3d at 1460–62; United States v. Alcoa, Inc., 152 F. Supp. 2d 37, 40 (D.D.C. 2001); InBev, 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''within the reaches of the public interest.'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[4] In determining whether a proposed settlement is in the public interest, the court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' SBC Commc'ns, 489 F. Supp. 2d at 17; see also Microsoft, 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); United States v. Archer-Daniels-Midland Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is ''within the reaches of public interest.'' United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983); see also United States v. Alcan Aluminum Ltd., 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). As this Court has previously recognized, to meet this standard ''[t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms, it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' United States v. Abitibi-Consolidated Inc., 584 F. Supp. 2d 162, 165 (D.D.C. 2008) (citing SBC Commc'ns, 489 F. Supp. 2d at 17).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, rather than to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' Microsoft, 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. Id. at 1459–60. As this Court recently confirmed in SBC Communications, courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' SBC Commc'ns, 489 F. Supp. 2d at 15.

In its 2004 amendments to the Tunney Act,[5] Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, stating ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). The clause reflects what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public-interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' SBC Commc 'ns, 489 F. Supp. 2d at 11.

IV. SUMMARY AND RESPONSE TO PUBLIC COMMENTS

During the 60-day public comment period, the United States received comments from the following associations and individuals: The American Antitrust Institute (''AAI''); The Consumers Federation of America and Consumers Union (''CFA/CU''), filing jointly; and Noelle Levesque, Chris Muse, David Neckolaishen, Denna Teece, Ira Warren

[4] Cf. BNS, 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). See generally Microsoft, 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'').

[5] The 2004 amendments substituted the word ''shall'' for ''may'' when directing the courts to consider the enumerated factors and amended the list of factors to focus on competitive considerations and address potentially ambiguous judgment terms. Compare 15 U.S.C. § 16(e) (2004), with 15 U.S.C. § 16(e)(1) (2006); see also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

Patasnik, and Bill Dunn. Upon review, the United States believes that nothing in these comments demonstrates that the proposed Final Judgment is not in the public interest. Indeed, the joint comments filed by CFA/CU outline the numerous public benefits flowing from the proposed Final Judgment. What follows is a summary of the comments and the United States's responses to those comments.

A. AAI

AAI describes itself as ''an independent Washington-based non-profit education, research, and advocacy organization.'' [6] AAI's membership is comprised primarily of antitrust lawyers and economists. It is managed by a Board of Directors that authorized the filing of its comments in this proceeding.[7]

AAI argues that because the proposed Final Judgment contains conduct remedies, it fails to match the allegations of the Complaint with an appropriate cure and thereby diverges from the Department's Antitrust Division Policy Guide to Merger Remedies and from longstanding policy in vertical merger cases.[8] AAI's statement of Department policy is incorrect. The Department has long recognized that there may be certain situations, i.e., vertical mergers in particular, ''where a structural remedy is infeasible.'' [9] In such cases, the Department's choice ''necessarily will come down to stopping the transaction or imposing a conduct remedy.'' [10] The Department analyzes each merger according to its unique facts. In this case, the Department determined that the transaction would result in anticompetitive harm and that the harm was not outweighed by merger-specific efficiencies. Contrary to AAI's comments, the Complaint does not allege that there were no efficiencies associated with the transaction. Rather, the Complaint alleges that ''[Ole proposed JV will not generate verifiable, merger-specific efficiencies sufficient to reverse the competitive harm of the proposed JV.'' [11] The proposed Final Judgment cures the anticompetitive harm while preserving the potential efficiencies flowing from the transaction.

AAI also criticizes the proposed Final Judgment's licensing provisions as ''requir[ing] ongoing oversight, monitoring, and compliance'' that antitrust enforcers and courts are ''woefully'' equipped to handle.[12] This criticism ignores the proposed Final Judgment's incorporation of an arbitration mechanism to resolve any disputes over whether the JV is meeting its obligations under the proposed Final Judgment to license popular NBCU content to competitors. Arbitration is commonly used to resolve such disputes, and the arbitration mechanism incorporated in the proposed Final Judgment should prevent the Department, or the Court, from being unnecessarily embroiled in difficult issues.'' [13]

AAI further argues that the proposed Final Judgment contains requirements with subjective terms that ''will open the door to disputes * * * '' [14] Any remedy, particularly one that involves a rapidly changing, high-technology market, will necessarily contain some open-ended or subjective terms to preserve needed flexibility. Arms-length negotiations should resolve most issues regarding these terms. The proposed Final Judgment sets out a general framework of access with a backstop of baseball-style arbitration. Unlike the FCC's arbitration provisions, which are appealable, arbitration under the proposed Final Judgment is binding on the parties. Thus, the parties have an increased incentive under the proposed Final Judgment to reach a commercial agreement without intervention by a third-party arbitrator. To the extent that the parties cannot reach agreement, an aggrieved OVD may appeal to the Department for the right to arbitrate. Under baseball-style arbitration, both parties submit their best offers to a neutral, third-party arbitrator who then decides which of the two offers is more reasonable based upon evidence in the record, including contracts with other parties. Baseball-style arbitration has been successfully employed as a vertical merger remedy pursuant to numerous FCC orders [15] and there is no evidence that it will not be an effective remedy in this case.

AAI also claims that the proposed Final Judgment relies on static benchmarks that fail to account for change in an emerging and dynamic OVD industry.[16] AAI is mistaken. The proposed Final Judgment explicitly recognizes that online video distribution is in its infancy and that the identity of new competitors, and the terms and conditions under which providers of programming will contract with them, may change. The proposed Final Judgment, therefore, sets forth different scenarios under which OVDs may seek video programming from the JV, both now and in the future. For example, Section IV.B.6 of the proposed Final Judgment sets forth different scenarios under which a Qualified OVD may seek additional video programming from the JV. Similarly, Section IV.B.7 defines the circumstances under which an OVD that subsequently becomes a Qualified OVD may seek new or additional video programming from the iv. Finally, Section IV.G which governs the JV's provision of video programming to Hulu, contemplates that the JV will enter agreements with Hulu on substantially the same terms and conditions as those of the broadcast owner whose renewed agreement is most economically advantageous to Hulu.

With respect to Hulu, AAI further argues that the proposed Final Judgment's delegation of voting rights in Hulu to the non-JV partners compromises the development of Hulu.[17] Although there is no question that Fox and ABC have a greater say in Hulu as a consequence of the proposed Final Judgment's requirement that Comcast vote its shares in line with their votes, AAI has not explained how this requirement is harmful to Hulu's development. The integrated Comcast-NBCU has different incentives vis-à-vis Hulu than does a standalone NBCU. By requiring the JV to relinquish its voting rights in Hulu to the non-JV partners, the proposed Final Judgment does not deprive the decision-making process of an ''independent'' non-voting member but, rather, restores how a standalone media partner would have voted with respect to Hulu. Additionally, Hulu, whose future competitiveness AAI purports to protect, does not object to the delegation of voting rights.

Ultimately, AAI's comments boil down to the argument that other remedies would be better than those contained in the proposed settlement. At some points, AAI contends that nothing short of a full prohibition of the merger would be adequate to redress the harm alleged in the Complaint.[18] At other

[6] Tunney Act Comments of the American Antitrust Institute on the Proposed Final Judgment, United States, et al., v. Comcast Corp., et al., No. 1–II–cv–00106 (RJL) (D.D.C.), at 2 (Mar. 29, 2011) (''AAI Comments''). These comments are attached as Exhibit A.

[7] Id. at 2.

[8] Id. at 5.

[9] U.S. Dep't of Justice, Antitrust Division Policy Guide to Merger Remedies, at 21 (Oct. 2004) (''Antitrust Division Remedies Guide''). The Antitrust Division Remedies Guide clarifies the policy considerations behind the Department's merger remedies. It expressly states that conduct remedies may provide effective relief for the likely anticompetitive effects of some vertical mergers. Id. Indeed, the Department has imposed conduct remedies in decrees pertaining to previous transactions involving vertical elements. See, e.g., Final Judgment, United States v. Northrop Grumman Corp. et al., 2003–1 Trade Cas. (CCH) ¶ 74,057 (D.D.C. June 10, 2003), 2003 WL 21659404.

[10] Antitrust Division Remedies Guide at 22.

[11] Complaint, *United States, et al.* v. *Comcast Corp., et al.,* No. 1–11–cv–00106 (RU), ¶ 56 (D.D.C. filed Jan. 18, 2011).

[12] AAI Comments at 11. AM's criticism is disingenuous. Elsewhere in its comments, AM suggests that a conduct remedy involving ''[w]alling off management decisions on the programming side of the JV from decisions on the distribution side will help prevent foreclosure of OVDs.'' Id. at 19–20. AAI does not explain how or why the proposed Final Judgment's conduct remedies are less likely to be successful than AAI's proposed conduct remedy.

[13] AAI's criticism also ignores the ongoing regulation and oversight of this industry by the FCC. Indeed, the FCC has imposed licensing conditions on the Defendants similar to those contained in the proposed Final Judgment. See Memorandum Opinion and Order, In re Applications of Comcast Corp., General Electric Co. and NBC Universal, Inc. for Consent to Assign Licenses and Transfer Control of Licensees, FCC MB Docket No. 10–56, 2011 WL 194538 (rel. Jan. 20, 2011), available at litvilwww.fcc.govily_Releases_ Business12011/db0309/FCC-11-4A1pdf.

[14] AAI Comments at 13.

[15] See, e.g., Memorandum Opinion and Order, In re The DirecTV Group and Liberty Media Corp., Applications for Transfer of Control, 23 F.C.C.R. 3265, 3342–49 (2008); Memorandum Opinion and Order, In re Adelphia Communications Corp., Time Warner Cable Inc., and Comcast Corp., Applications for Transfer of Control, 21 F.C.C.R. 8203, 8337–40 (2006); Memorandum Opinion and Order, In re General Motors Corporation, Hughes Electronics Corporation, and News Corporation, Applications for Transfer of Control, 19 F.C.C.R. 473, 677–82 (2004).

[16] AAI Comments at 15.

[17] Id. at 17.

[18] See AAI Comments at 4, 18. This argument is not new. As noted above, AAI previously filed comments with the FCC in which encouraged the

Continued

points, it suggests a variety of modifications to the proposed Final Judgment.[19] Although AAI concedes that ''this Court is not authorized to re-write the consent decree,'' it appears to invite the Court to do exactly that. However, the Department in a Tunney Act proceeding must show only that the settlement is ''within the range of acceptability or 'within the reaches of the public interest.' ''[20] As set forth in the CIS and as discussed above, the Department believes that the proposed Final Judgment is not only ''reasonably adequate,''[21] but that it provides effective, carefully tailored relief that will prevent the anticompetitive harms alleged in the Complaint. Nothing in AAI's comments should dissuade this Court from concluding that entry of the proposed Final Judgment is in the public interest.

B. CFA/CU

The Consumers Federation of America (''CFA'') is an association of three hundred nonprofit organizations that promote consumer issues through research, education, and advocacy.[22] Consumers Union (''CU''), the publisher of Consumer Reports, is a non-profit that provides consumers with information, education, and policy advice on a range of issues affecting consumer health and welfare.[23] Both CFA and CU met with the Department and filed comments with the FCC relating to this transaction.[24] While CFA/CU's ''initial take'' on the acquisition was that it should be blocked, CFA/CU now believes that ''the FCC and the DOJ have put together a set of conditions and enforcement measures that * * * protect consumers and promote the public interest.''[25] Specifically, CFA/CU argues that the proposed Final Judgment's licensing conditions, which require the JV to match the best practices of its peers, as well as the proposed Final Judgment's prohibitions on restrictive contracting practices, will better ensure the availability of programming for online video distribution.[26] CFA/CU not only believes that the licensing provisions are enforceable, but that the proposed Final Judgment provides the Defendants with strong incentives to reach commercially reasonable agreements without invoking enforcement mechanisms.[27] For these and other reasons, CFA/CU concludes that ''[c]onsumers and competition will be better off as a result of the judgment than if the merger had been denied.''[28]

C. Additional Comments

The United States also received comments from six citizen complainants.[29] The citizen complainants generally argue that the Department should not have allowed the transaction to have gone forward. None of these comments raises substantive issues regarding the efficacy of the relief contained in the proposed Final Judgment to remedy the competitive harm in the market for distribution of full-length professional video programming to residential consumers alleged in the Complaint.

V. CONCLUSION

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint and is therefore in the public interest. The relatively small number of comments filed by persons objecting to the settlement, especially when weighed against the size and complexity of the transaction, is itself indicative of the adequacy of the proposed Final Judgment. Accordingly, after the comments and this response are published, the United States will move this Court to enter the proposed Final Judgment.

Dated: June 6, 2011

Respectfully submitted,

\s\

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March 29, 2011

VIA ELECTRONIC MAIL

Nancy Goodman
Chief, Telecommunications & Media Enforcement Section
Antitrust Division
Department of Justice
450 Fifth Street, NW.,
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Washington, DC 20530

Re: Tunney Act Comments in U.S. v. Comcast Corp., General Electric Co., and NBC Universal, Inc.

Dear Ms. Goodman:

Attached please find comments of the American Antitrust Institute in U.S. vs. Comcast Corp., General Electric Co., and NBC Universal, Inc., pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (Tunney Act).

Sincerely,

Diana L. Moss
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
STATE OF CALIFORNIA,
STATE OF FLORIDA,
STATE OF MISSOURI,
STATE OF TEXAS, and
STATE OF WASHINGTON,

Plaintiffs,

v.

COMCAST CORP., GENERAL ELECTRIC CO., and NBC UNIVERSAL, INC.,

Defendants

Case: 1:11-cv-00106
Judge: Richard, J. Leon

TUNNEY ACT COMMENTS OF THE AMERICAN ANTITRUST INSTITUTE ON THE PROPOSED FINAL JUDGEMENT

I. Introduction

The American Antitrust Institute (AAI) is an independent Washington-based nonprofit education, research, and advocacy organization. The AAI is devoted to advancing the role of competition in the economy, protecting consumers, and sustaining the vitality of the antitrust laws. The AAI is managed by its Board of Directors, which alone has approved this filing. Its Advisory Board consists of over 115 prominent antitrust lawyers, economists, and business leaders. The AAI has had an interest in this proceeding because it raises critical issues of competition policy and consumer choice involving video programming and distribution and diversity in the media. In June 2010, the AAI filed comments with the Federal Communications Commission (FCC) in the docket assigned to the Comcast/NBCU joint venture (IV).[1] Those comments discuss some of the key competitive issues raised by the JV and urge the FCC to reject the transaction.[2]

Commission to deny approval of the Comcast/NBCU transaction. AAI's FCC Comments at 7, 26.

[19] See, e.g., AAI Comments at 19.

[20] See United States v. Am. Tel. & Tel. Co., 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting United States v. Gillette Co., 406 F. Supp. 713, 716 (D. Mass. 1975)), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983); see also, e.g., SBC Commc'ns, 489 F. Supp. 2d at 17 (''Further, the Court must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations because this may only reflect underlying weakness in the government's case or concessions made during negotiation.''). In this case, the Department concluded that entry of the proposed Final Judgment was preferable to incurring the costs and risks associated with seeking an injunction to block the transaction, especially since the former may allow the realization of merger-specific efficiencies.

[21] See SBC Commc 'ns, 489 F. Supp. 2d at 17.

[22] See Tunney Act Comments of Consumer Federation of America and Consumers Union, United States, et al., v. Comcast Corp., et al., No. 1–11–cv–00106 (RJL) (D.D.C.), at 1 n.1 (Apr. 1, 2011) (''CFAJCU Comments''). These comments are attached as Exhibit B.

[23] Id.

[24] See supra note 1.

[25] CFA/CU Comments at 2.

[26] See id. at 4.

[27] Id. at 4–5.

[28] Id. at 5.

[29] The citizen complainants are Noelle Levesque, Chris Muse, David Neckolaishen, Denna Teece, Ira Warren Patasnik, and Bill Dunn. Their comments are attached as Exhibits C–H. Pursuant to a specific request, the Department has redacted the e-mail and mailing addresses of the citizen complainants.

[1] See Federal Communications Commission, in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56.

[2] American Antitrust Institute, Comments, in the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56 (June 21, 2010). Available at http://www.antitrustinstitute.oresiteddefault/files/AAI_Comcast_NBCU%20Comments_2_070220101958.pdf.

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (APPA), 15 U.S.C. § 16 (Tunney Act), the AAI submits these comments on the Proposed Final Judgment (PFJ or consent decree) in the above-mentioned case.[3] Congress has made this Court the final arbiter of the propriety of mergers under the antitrust laws. The Court must ''determine that the entry of such judgment is in the public interest.''[4] If the Court cannot make this finding, it must reject the PFJ unless more adequate provisions are made to protect the public interest. In the following analysis, the AAI respectfully argues that for the numerous reasons set forth, the consent decree is not in the public interest and should be rejected by the Court.

The AAI's comments proceed as follows. Section II provides an overview of the Comcast/NBCU JV and details the major reasons why it will establish poor precedent for merger policy. Section III summarizes the U.S. Department of Justice (DOJ) Complaint.[5] Section IV outlines specific problems that make the consent decree unsuitable, and Section V concludes with suggested modifications to the PFJ that would bring it more into line with the Complaint. The PFJ suffers from the following problems:

- The PFJ lacks a strong justification for the use of open access remedies, which are inconsistent with the DOJ's guidelines and principles of antitrust remedies.
- The PFJ contains requirements that are defined by subjective terms and therefore invite dispute, arbitration, delay, and expense.
- The PFJ's requirements are based on static benchmarks that will undoubtedly change in an emerging and dynamic online video distribution (OVD) industry but for which the PFJ envisions no adjustments or flexibility.
- The PFJ's delegation of NBCU's voting rights in Hulu will compromise important voting dynamics regarding management and governance, potentially affecting how the most important OVD develops.
- Short of the DOJ suing to stop the transaction, no set of remedies will prevent the JV from controlling how rivalry develops between two major, important systems—the delivery of programming through cable television and cable modem high-speed internet (HSI).

II. Overview

The combined Comcast/NBCU will arguably be the pre-breakup ''Standard Oil'' of modern video programming and distribution. By placing valuable and important NBCU programming under Comcast's control, the JV will directly or indirectly control everything from the creation to delivery of video programming to the consumer through a variety of distribution conduits or channels. With the JV, Comcast will be in a position to decide whether or not to sell important NBCU programming to its rivals, including other multi-video programming distributors (MVPDs) such as digital broadcast satellite (DBS) providers, telcos, cable overbuilders, and OVDs. Because the OVD segment of the video programming distribution (VPD) market is in the early stages of development and would benefit the most from competitive market forces, the JV is particularly troublesome. And because Comcast is a dominant supplier of cable modem HSI and cable television services in numerous geographic areas in the U.S., its control over NBCU will enable it to determine, step-by-step, how the delivery of programming via the two competing modes of distribution develops over time. As a result, the JV will adversely affect competition in the market for VPD, to the detriment of consumers.

Thousands of pages of comments and protests in the FCC docket describe the multitude of competitive and consumer harms potentially inflicted by the merger.[6] Questions, concerns, and calls for rigorous merger enforcement have been raised in media commentaries, hearings, and other public fora. Yet we need look no further than the DOJ Complaint itself to assess the gravity of the JV's anticompetitive effects:

> * * * the proposed joint venture * * * would allow Comcast, the largest cable company in the United States, to control some of the most popular video programming among consumers, including the NBC Television Network [ ] and the cable networks of NBC Universal, Inc. []. If the JV proceeds, tens of millions of U.S. consumers will pay higher prices for video programming distribution services, receive lower-quality services, and enjoy fewer benefits from innovation.[7]

Herein lies the dilemma facing the court. The DOJ's failure to match its Complaint with an appropriate cure diverges from its own remedies guidelines and from long-standing precedent in vertical merger cases. For example, the DOJ's Antitrust Division Policy Guide to Merger Remedies (Policy Guide) states: ''There must be a significant nexus between the proposed transaction, the nature of the competitive harm, and the proposed remedial provisions.''[8] For the reasons set forth in Section IV below, the lack of such a nexus means that the PFJ will not protect or restore competition, which the Supreme Court has emphasized is the paramount purpose of an antitrust remedy.[9] Moreover, if the PFJ is found by the Court to be in the public interest, it will set a dangerous precedent for merger policy, for three major reasons.

First, the troubling incongruity between the strength of the DOJ's Complaint and the weakness of the PFJ will only encourage the very conduct identified in the Complaint; it is reminiscent of when a larcenist gets off with a warning and immediately repeats his crime. This incongruity creates a standard that is likely to serve as a green light for all future mergers to come—no matter how anticompetitive or anti-consumer. Enforcement with a ''bark but no bite'' will limit the effectiveness of merger control as a tool for protecting competition in the U.S. economy.

Second, the PFJ employs weak, regulatory-style conduct remedies for a transaction that, as discussed later, the DOJ Complaint states is devoid of any countervailing efficiencies.[10] Indeed, the antitrust agencies have reserved conduct remedies for cases where they specifically wish to preserve demonstrated efficiencies resulting from vertical integration. The Policy Guide states, for example, that:

> * * * the use of conduct remedies standing alone to resolve a merger's competitive concerns is rare and almost always in industries where there already is close government oversight. Stand-alone conduct relief is only appropriate when a full-stop prohibition of the merger would sacrifice significant efficiencies and a structural remedy would similarly eliminate such efficiencies or is simply infeasible.[11]

Whether this departure from the agency's preferred practice reflects the undue influence of the regulatory culture in the DOWFCC collaborative process or other forces, it is a dangerous line to cross. If the PFJ is not rejected, it is likely to set a precedent for the use of weak behavioral remedies in similarly harmful transactions.

Finally, we can expect that the demonstrated and documented problems with conduct remedies will come to bear on the post-merger conduct of the JV, limiting their effectiveness and exposing competition and consumers to the harms so clearly described in the Complaint. For example, conduct remedies are known to be easy to circumvent. Moreover, such remedies are difficult to enforce and impose undue compliance and monitoring burdens on the Courts. For these reasons, the antitrust agencies themselves have typically disfavored such approaches. Adopting conduct remedies here is unprecedented and effectively transforms the DOJ into a regulatory agency.

III. The Complaint—Competitive Harm Inflicted by the Proposed Comcast/NBCU JV

According to the Complaint, by adding NBCU's content to its existing arsenal of assets, Comcast will have the increased ability to cut off or raise the price of important NBCU programming to rival VPDs. Those distributors include both (1) traditional MVPDs such as rival cable companies, DBS, cable overbuilders, and

[3] U.S. Department of Justice, Proposed Final Judgment, U.S. and Plaintiff States v. Comcast Corp., et al., No. 1:11–cv–00106 (D.C. Cir. January 18, 2011).

[4] 15 U.S.C. § 16(e). See, e .g., United States v. Microsoft Corp., 56 F.3d 1448, 1458 (D.C. Cir. 1995).

[5] U.S. Department of Justice, Complaint, U.S. and Plaintiff States v. Comcast Corp., et al., No. 1:11–cv00106 (D.C. Cir. January 18, 2011).

[6] See Federal Communications Commission transaction team re: Comcast Corporation and NBC Universal. Available *http://www.fcc.gov/transaction/comcast-nbcu.html#record.*

[7] Supra note 5, at para. 2.

[8] United States Department of Justice, Antitrust Division, ANTITRUST DIVISION POLICY GUIDE TO MERGER REMEDIES (October 2004), at p. 2. Available *http://www.justice.goviatr/public/guidelines/205108.pdf.*

[9] Id., at p. 4. Citing to United States v. E.I. du Pont de Nemours & Co., 366 U.S. 316, 326 (1961).

[10] Supra, note 5, at para. 56.

[11] Id. at para. 20.

telcos, and (2) OVDs.[12] These effects thus capture standard anticompetitive vertical foreclosure or raising rivals costs concerns associated with vertical integration. Comcast/NBCU, however, is a one-sided coin. Vertical efficiencies such as economies of coordination and lower transaction costs that often have a countervailing effect on anticompetitive harms are not present here. The Complaint, in fact, states that the proposed JV ''will not generate verifiable, merger-specific efficiencies sufficient to reverse the competitive harm of the proposed JV.'' [13]

The loss of NBCU as an independent force in the production of programming will inflict particularly serious damage to competition and consumers. For example, the Complaint stresses the importance of NBCU's programming to both MVPDs and OVDs, referring to it as ''vital'' and a ''potent tool'' which, if controlled by Comcast, could be used to disadvantage VPD rivals.[14] Moreover, NBCU content is critical for rival distributors to ''attract and retain customers'' and to ''compete effectively.'' [15] Further, NBCU has been one of the content providers ''most willing to support OVDs and experiment with different methods of online distribution.'' [16] The Complaint's predicted effects of the IV include a diminution of innovation in the relevant market for VPD, fewer choices for consumers, and higher prices for programming.[17]

The likely effect of the JV on OVDs, however, is particularly pernicious. The Complaint notes that Comcast documents ''consistently portray the emergence of OVDs as a significant competitive threat'' [18] and that Comcast has taken steps to prevent its cable customers from cord-shaving or cord-cutting in favor of OVDs.[19] The Complaint characterizes the impact of the JV on emerging competition from OVDs as ''extremely troubling'' given that OVDs are in the nascent stages of development and that they have the potential to ''significantly increase competition'' by introducing programming with new and innovative features, packaging, pricing, and delivery methods.'' [20]

Thus, by cutting off or raising prices of NBCU content to OVDs, the Complaint predicts that Comcast could ''curb'' nascent OVD competition and ''encumber'' the development of ''nascent distribution technologies and the business models that underlie them.* * *'' [21] As a result, Comcast will face less competitive pressure to innovate and the future evolution of OVDs will likely be muted.[22] Given that entry in traditional VPD in Comcast's many service areas is difficult and unlikely, the Complaint states that OVDs' are ''likely the best hope for additional video programming distribution competition in Comcast's cable franchise areas.'' [23] Impairing competition from OVDs would therefore inflict particularly grave harm on consumers.

IV. The Proposed Final Judgment—Weak Conduct Remedies that Fail to Address Competitive Harms and do not Preserve Competition

The breadth and depth of the competitive concerns articulated in the Complaint could, in theory, support a government decision to seek a full-stop injunction that would prevent the parties from consummating the transaction. Absent that, the strength of the Complaint warrants conditions that are far stronger than the conduct remedies that are contained in the consent decree. The contrived world in which the JV is allowed to go forward will be defined by a series of prescriptive and far-reaching prohibitions, requirements, and permissions regarding the JV's conduct, many of which are duplicated in the FCC's order.[24] The DOJ's guidelines for remedies clearly disfavor conduct-based fixes. The logic behind this is well known. For example, the Policy Guide states that:

''A carefully crafted divestiture decree is simple, relatively easy to administer, and sure to preserve competition. A conduct remedy, on the other hand, typically is more difficult to craft, more cumbersome and costly to administer, and easier than a structural remedy to circumvent.'' [25]

The following sections address several flaws in these myriad conditions that make them subject to dispute and arbitration, relatively ineffective, difficult to enforce, and therefore not in the public interest.

A. The PFJ lacks a strong justification for the use of open access remedies, which are inconsistent with the DOJ's guidelines and principles of antitrust remedies.

The core of the PFJ describes what is essentially an open access or fair dealing requirement for how Comcast/NBCU may deal with OVDs that the Complaint stresses are particularly imperiled by the JV. The open access requirement also covers how the JV deals specifically with Hulu, a leading OVD, in which NBCU will be allowed to maintain its ownership interest. The FFJ requires the JV to provide programming to OVDs that is: (1) Economically equivalent to what it provides to rival MVPDs and (2) economically equivalent and comparable to what a rival OVD receives from a peer (i.e., broadcast networks, cable programmers, etc.).[26] The PFJ also requires the JV to provide programming to Hulu comparable to that offered by a Hulu broadcast network owner providing the greatest quantity of programming.[27]

Presumably, the open access requirement is designed to replicate a situation where competitive market forces govern how an independent NBCU engages with OVDs. This is a notoriously difficult task, however, and doing so in a nascent industry is a largely untested and risky endeavor. This regulatory framework will shape how the industry evolves, the pace of innovation, and the choices available to consumers, with uncertain and potentially harmful effects relative to what might happen if NBCU remained independent. The Policy Guide again provides critical insight: ''When used at all in Division decrees, such [conduct] provisions invariably require careful crafting so that the judgment accomplishes the critical goals of the antitrust remedy without damaging market performance.'' [28]

Open access conditions have been favored by regulators in restructuring industries such as electricity, natural gas, and telecommunications. They have also been employed in some cases as conditions required for regulatory approval of mergers.[29] Conduct remedies require ongoing oversight, monitoring, and compliance that regulators are institutionally set up to deal with, but which the courts are woefully not. Such fixes have even stymied regulators, as vertically-integrated firms find loopholes and ways to work around the requirements to engage in the discriminatory behavior that is in their best economic interest. Indeed, the DOJ's Policy Guide identifies this very concern in discussing conduct remedies when it states: ''* * * care must be taken to avoid potential loopholes and attempted circumvention of the decree.'' [30] Perhaps the most notable example is open access in the U.S. electricity industry. Ongoing anticompetitive behavior by vertically-integrated transmission owners has perpetuated successive rulemakings designed to patch or close gaps in conduct requirements.[31]

Rarely have open access conditions been employed as a merger remedy by an antitrust agency. In the merger of America Online/Time Warner, the Federal Trade Commission used an open access requirement to ensure that the merged firm would not foreclose rival internet service providers.[32] However, in comparison to the sweeping open access requirements employed by the DOJ in Comcast/NBCU, it was a tailored remedy and did not involve technologies or markets in the same formative stage as OVDs. In light of the foregoing, the use of open access or fair dealing remedies are inconsistent with internal guidelines and well-established principles of antitrust remedies. As a result,

[12] Supra note 5, at para. 4.

[13] Id., at para. 56.

[14] Id., at para. 4.

[15] Id., at para. 6 and 49.

[16] Id., at para 52.

[17] Id., at para 4.

[18] Id., at para 36 and 46.

[19] Id., at para. 53.

[20] Id., at para. 52.

[21] Id., at para. 54.

[22] Id.

[23] Id., at para. 9.

[24] See Federal Communications Commission, Memorandum Opinion and Order, the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal Inc. for Consent to Assign Licenses or Transfer Control of Licensees, MB Docket No. 10–56 (January 20, 2011), Appendix A.

[25] Supra note 8, at p. 8 (internal citation and quotation omitted).

[26] Supra note 3, Sections IV(A) and (B).

[27] Id., Section IV(G).

[28] Supra note 8, at p. 25.

[29] See, e.g., Public Serv. Co. of Col., 58 F.E.R.C. 61,322, at 62,039 (1992) (approving the proposed merger because the parties agreed to provide transmission access to third parties).

[30] Supra note 8, at p. 6.

[31] See, e.g., Preventing Undue Discrimination and Preference in Transmission Service, Order No. 890, FERC Stats. & Regs.1 ¶ 31,241, at para. 26.

[32] See Federal Trade Commission, Decision and Order, in the Matter of America Online Inc. and Time Warner Inc., Docket No. C–3989 (December 14, 2000).

there ought to be a strong justification for their use here, which is lacking in the PFJ.

B. The PFJ contains requirements that are defined by subjective terms and therefore invite dispute, arbitration, delay, and expense.

Under the PFJ's open access requirements, programming to be provided by the JV to OVDs must be economically equivalent to that which: (1) It provides to MVPDs and (2) peers provide to OVDs. Economically equivalent means the ''prices, terms, and conditions that, in the aggregate, reasonably approximate'' those on which the JV provides programming to an MVPD.[33] The open access requirement with respect to the programming provided by the JV to an OVD is also required to be ''comparable'' or ''reasonably similar in kind and amount, considering the volume and its value'' to that which an OVD receives from a peer.[34] Moreover, the programming to be provided by the JV to Hulu must be ''comparable'' in terms of ''type, quantity, ratings, and quality'' and provided on ''substantially the same terms and conditions.''[35]

Any condition containing subjective terms such as ''in the aggregate'' or ''reasonably approximate,'' ''reasonably similar,'' or ''substantially the same'' lacks clarity and requires the application of judgment. The Policy Guide emphasizes that remedies must be clear and understandable:

''Consequently, decree provisions must be as clear and straightforward as possible, always focusing on how a judge not privy to the settlement negotiations is likely to construe those provisions at a later time.''[36]

and:

''Remedial provisions that are vague or that can be construed when enforced in such a manner as to fall short of their intended purposes can render the enforcement effort useless.''[37]

The need for clear and precise terms is essential for establishing the starting set of open access conditions that constitute economic equivalency and comparability for the JV's provision of programming. Clarity and precision, however, become particularly important when determining what adjustments to the prices, terms, and conditions for the JV's programming are necessary over the term of the PFJ.[38] The meaning of these terms—which is not specified in the PFJ—will be interpreted differently by the JV and rival OVDs. This will open the door to disputes and arbitration, thus impeding the implementation of the remedies and increasing the costs of monitoring and compliance. Predictability, which is so important for investment decisions that will be critical to this industry's future, is absent. Unpredictability is inherently advantageous to the JV, whose decisions will have to be challenged after the fact, implying a competitive disadvantage in time and expense to competitors.

C. The PFJ's requirements are based on static benchmarks that will undoubtedly change in an emerging and dynamic OVD industry but for which the PFJ envisions no adjustments or flexibility.

Key elements of the PFJ's open access requirements are defined by benchmarks that will undoubtedly change as the nascent OVD industry develops over the time the PFJ is in effect. But the consent decree does not explain or account in any way for how such benchmarks should be adjusted or modified as a result of changes in a dynamic industry. There are three major areas where the open access requirement suffers from this problem.

First, the PFJ states that economic equivalence will be determined, in part, by differences in the: (1) Advertising revenues earned through MVPD versus OVD distribution and (2) value of programming received by the JV versus through a peer.[39] As a preliminary matter, how these important revenue and value differences should be interpreted is not explained in the PFJ, making it a ''black box'' calculation that will inevitably lead to disputes. More important, advertising revenue and value are particularly dynamic concepts in a nascent OVD market. As the market develops over the seven years the PFJ is in effect, we could expect differences in these parameters to change as a result of how OVDs and their business models evolve and how the MVPD segment of the VPD market responds to changes in competition from OVD.

Second, the open access condition makes the provision of video programming by the JV to OVDs contingent on a current set of OVD relationships. For example, provision of programming by the JV is contingent on what the OVD already receives—both in terms of the category of peer (e.g., broadcast network, cable programmer, or production studio), choice of specific peer, and number of peers.[40] In regard specifically to Hulu, the PFJ requires the JV to continue to provide programming on ''substantially the same'' terms and conditions that were in place on January 1, 2011.[41] Again, as the OVD industry develops and matures, we would expect change not only in the programming that Hulu buys, but the types of peers with which Hulu deals.

Third, the PFJ's open access requirements state that the provision of programming by the JV to OVDs that is also provided to MVPDs may be conditioned on the ability of the OVD to ''satisfy reasonable quality and technical requirements for the display and secure protection of the JV's programming.''[42] As in many other instances, the PFJ does not state how such quality and technical requirements are to be determined. More importantly, the consent decree does not make provisions for how quality and technical standards might change as the OVD industry develops and matures.

Static benchmarks for setting the JV's programming terms for OVDs generally, and for Hulu specifically, take no account of how such entities will develop over time in an emerging OVD market and how their programming needs will change as a result of changes in the market. The DOJ's Policy Guide identifies this as a distinct downside of conduct remedies when it states: ''* * * even where 'effective,' efforts to regulate a firm's future conduct may prevent it from responding efficiently to changing market conditions.''[43] Tying the conduct of the firm to parameters that are rooted in existing market conditions in a dynamic market situation runs the risk of shaping or constraining how competition in a nascent OVD market develops. Such conditions are ill-founded and likely to be ineffective, time consuming, and expensive. The PFJ is devoid of any provisions that specifically address the importance of this aspect of emerging competition from OVDs that the Complaint so clearly states is at risk.

D. Delegation of NBCU's voting rights in Hulu will compromise important voting dynamics regarding management and governance, potentially affecting how the most important OVD develops.

Hulu is one of the leading and most innovative OVDs. Rather than require the divestiture of Hulu, in which NBCU has a 33 percent interest, the PFJ will allow the JV to retain its ownership share, subject to a number of restrictions. The PFJ states, among other things, that the JV must delegate its voting and other rights in Hutu ''* * * in a manner and amount proportional to the vote of all other votes cast by other Hulu owners * * *''[44] The effect of this provision will be to proportionately ''scale-up'' the voting shares of the other Hulu owners—ABC, Fox, and Providence Equity Partners. In other words, each remaining owner will assume a portion of NBCU's voting rights, in proportion to its ownership share.

This remedy will potentially affect decision-making that has made Hulu an innovative OVD and shaped competition in that segment of the VPD market. For example, under the PFJ, each non-NBCU Hulu owner will have a larger vote in matters relating to governance and management. This is akin to NBCU giving its proxy to the remaining three owners in proportion to their respective ownership shares. As a preliminary matter, the downsides of proxy voting are well-known, which deprives the decision-making process of the independent, informed judgment of the non-voting member. The scaling-up approach also changes the dynamics of consensus-building involving Hulu governance and management decisions. For example, before the JV, NBCU needed the vote of any one of the remaining three owners to gain a majority. But unless the remaining three owners all teamed up, they could not gain a majority. Post-JV, any of the three owners with adjusted voting shares would gain a majority if they team up with only one other owner. The adjustment of voting shares under the PFJ condition will soften the internal ''give and take'' among the Hulu owners necessary to reach consensus on key decisions.

[33] Supra note 3, at Section IV(A).

[34] Id., at Section IV(B).

[35] Id., at Section IV(G).

[36] Supra note 7, at p. 6.

[37] Id., at p. 5.

[38] Supra note 3, at Section IV(B)(4).

[39] Supra note 3, at Section IV(A)(1).

[40] Id., at Section IV(B)(5).

[41] Id., at Section (IV)(G).

[42] Supra note 3, at Section IV(A)(6).

[43] Supra note 7, at pp 8–9.

[44] Supra note 3, at Section IV(D).

The critical question therefore is whether the scaling-up of voting shares envisioned by the consent decree will preserve the dynamics that have been responsible for Hulu's innovative strategy and growth. This dynamic has, in turn, played a fundamental role in shaping competition in the OVD segment of the VPD market. The scaling-up condition will likely not protect competition (as is required for the PFJ to be in the public interest) relative to a scenario that preserves the pre-JV structure of voting on Hulu governance and management matters. Such an approach would require NBCU to divest its interest in Hulu to a viable third party buyer.

E. Short of the DOJ suing to stop the transaction, no set of remedies will prevent the IV from controlling how rivalry develops between two major, important systems—the delivery of programming through cable television and cable modem HSI.

As described in the Complaint, the adverse effect the IV will have on competition can be viewed through a slightly different lens. In its comments to the FCC, for example, the AAI characterized the competitive problem as one in which the JV will increase Comcast/NBCU's control over two major programming and distribution systems—cable television and cable modem HSI. Such control allows the JV to potentially forestall inter-system rivalry, by monitoring and controlling the development, pace of innovation, accessibility, quality, positioning, and viability of the two systems.[45] Indeed, the Complaint highlights the fact that Comcast has taken actions to control how consumers make choices between programming delivered via the two competing systems.[46]

Absent the JV, market forces would be the determining factor in how the delivery of programming to consumers via the two rival systems evolves over time. In light of the flaws in the PFJ's conditions and requirements described above, there is a high probability that the JV will exercise significant control over how the OVD system develops relative to the cable television distribution system, to the detriment of competition and consumers.

V. Conclusion

Based on the foregoing analysis, the AAI respectfully suggests that the weaknesses in the remedies set forth in the PFJ are ill-matched to the competitive harms outlined in the Complaint. The Court should not give DOJ ''a pass'' in its review of this merger. There is little in the PFJ that is likely to preserve effective competition in the relevant markets, or to prevent the consumer harm that will flow from the impairment of competition. We understand that this Court is not authorized to re-write the consent decree, but it can note the availability of modifications to which the parties might agree in order to meet the public interest test.

First, rather than risking the inevitable disputes and abuse that open access remedies invite, independent management and governance of the JV should be considered. Walling off management decisions on the programming side of the JV from decisions on the distribution side will help prevent foreclosure of OVDs. Under this condition, all officers and directors of the JV should be unaffiliated with either of the JV owners. Second, NBCU should divest its ownership interest in 1-lulu to an independent party that will exercise full voting rights and inject the competitive discipline that is an essential part of corporate decision-making. That Hulu is a key player in the OVD industry stresses the importance of divestiture as the only way to ensure that it does not suffer anticompetitive harm at the hands of the JV and that it remains a viable entity, unfettered by the constraints of the JV.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States of America, State of California, State of Florida, State of Missouri, State of Texas, State of Washington

Plaintiffs,

v

Comcast Corp., General Electric Co., and NBC Universal Inc.

Case: 1:11-cv-00106
Judge: Richard, J. Leon

TUNNEY ACT COMMENTS OF THE CONSUMER FEDERATION OF AMERICA AND CONSUMERS UNION

Commenters

The Consumer Federation of America (CFA) [1] and Consumers Union (CU) [2] participated actively in the review of the Comcast-NBCU merger at the Federal Communications Commission (FCC) and met with the team reviewing the merger at the Department of Justice (DOJ). CF/CU have decades of experience in examining mergers and public policy in the sectors affected by this merger—multichannel video programming distribution (MVPD), Internet access, and media markets.[3]

The Competitive and Consumer Benefits of the Proposed Final Judgment

In testimony before the Senate over a year ago, the Consumer Federation of America and Consumers Union pointed to critical moments in the recent history of the multichannel video market when policy makers had failed to effectively protect competition and consumers.

Over the past quarter century there have been a few moments when a technology comes along that holds the possibility of breaking the choke hold that cable has on the multi-channel video programming market, but on each occasion policy mistakes were made that allowed the cable industry to strangle competition. This is the first big policy moment for determining whether the Internet will function as an alternative platform to compete with cable. We all hope the Internet will change everything in the video product space, but it has not yet * * * If policymakers allow this merger to go forward without fundamental reform of the underlying industry structure, the prospects for a more competition-friendly, consumer-friendly multichannel video marketplace will be dealt a severe setback.

Our initial take was that the merger should be rejected, but the FCC and the DOI have put together a set of conditions and enforcement measures that we believe will protect consumers and promote the public interest. The Proposed Final Judgment in the instant proceeding, combined with the conditions included in the Memorandum and Order transferring various broadcast and cable license issued by the Federal Communications Commission (FCC),[4] mark an important milestone in the quarter of a century long struggle to protect consumers from the abuse of market power that was unleashed by the Cable Deregulation of 1984. These comments review both key conditions in the Proposed Final Judgment and the FCC Memorandum and Order, in so far as it affects the online video market. We state the obvious, when we point out that if the DOI had locked the merger, none of the public interest benefits that flow from the Memorandum and Order would be realized.

The post-merger marketplace with the conditions will be friendlier to Internet consumers and more supportive of video competition than if the FCC and the DOI

[45] Supra note 2, at pp. 4, 6, and 17.

[46] Supra note 20.

[1] The Consumer Federation of America is one of the nation's oldest and largest consumer groups. Formed in 1968, CFA is an association of some 300 non-profit organizations, working to advance the consumer interest through research, education, and advocacy. Dr. Mark Cooper is Director of Research at CFA.

[2] Consumers Union of United States, Inc., publisher of Consumer Reports, is a nonprofit membership organization chartered in 1936 to provide consumers with information, education, and counsel about goods, services, health and personal finance. Consumers Union's publications have a combined paid circulation of approximately 7.3 million. These publications regularly carry articles on Consumers Union's own product testing; on health, product safety, and marketplace economics; and on legislative, judicial, and regulatory actions that affect consumer welfare. Consumers Union's income is solely derived from the sale of Consumer Reports, its other publications and services, fees, and noncommercial contributions and grants. Consumers Union's publications and services carry no outside advertising and receive no commercial support. Patti! P. Desai is communications policy counsel for Consumers Union, working out of the Washington, DC office. Parul manages the organization's advocacy efforts on cable, wireless, telephone, and Internet policy. She is also responsible for working closely with Federal policy makers on telecommunications and media law and policy.

[3] Testimony of Dr. Mark Cooper, Director of Research, Consumer Federation of America on behalf of Consumer Federation of America, Free Press and Consumers Union before the Commerce Committee, U.S. Senate, Regarding, ''Consumers, Competition and Consolidation in the Video Broadband Market,'' March 11, 2010, p. 11.

[4] In the Matter of Applications of Comcast Corporation, General Electric Company and NBC Universal, Inc. For Consent to Assign Licenses and Transfer Control of Licensees Memorandum opinion and order, NB Docket No. 10–56, January 20, 2011.

would have blocked the merger in three critical ways:

• Consumer access to broadband,
• distributor access to consumers, and
• the availability of programming on the Internet platform.

The Proposed Final Judgment adopts a framework that we have advocated for decades and presented in comments to the FCC and testimony to the Congress. It defines the markets carefully to assess the potential for the abuse of market power by the post-merger firm.

• It rests its concern on the local market power of the cable operators, including high current market shares protected by substantial barriers to entry.
• It defines the product market as the professional video programming industry, brushing aside the claim that all manner of short form content competes with long-form programming content.
• It identifies online video distribution (OVD) as an important nascent model that competes with the incumbent multichannel video program distributors (MVPD).

It identifies two specific types of anticompetitive conduct that would be rendered much more likely as a result of the merger.

• The withholding of must have content from potential or actual competitors could weaken competition.
• The provision of broadband Internet access service, as the key choke point and the indispensible input for OVD delivery of service, can be used to dramatically undermine competition through restriction on the availability of capacity, management of traffic flows, and/or pricing.

The Proposed Final Judgment addresses the vertical leverage problem that this merger poses.

Consumer Access to Broadband Internet Access Service

Consumers, particularly low income consumers, will have better access to broadband Internet access service.

• The program to increase broadband adoption among low income households will not only add millions of subscribers to the Broadband network in Comcast's service territory, it will serve as a model for the nation as we move into the implementation of the national broadband plan.
• Standalone broadband will be available at a price that cannot increase for three years.
• The DOJ ensures that service available to consumers will be required to be of sufficient quality to support OVD competition.

Distributor Access to the Broadband Internet

Distributors of video content over the Internet will have better access to broadband consumers.

• The network neutrality conditions recently implemented are secured for the largest broadband Internet access provider, regardless of the outcome of legislation or litigation.
• A minimum capacity adequate to support video distribution will be available for competing video is guaranteed.

The Flow of Programming Onto the Internet Platform

The availability of programming for Internet distribution will be better.

• NBC will be required to match the best practices in making content available by independent programmers that are similar in size.
• The contracting practices of Comcast and NBC will be constrained with respect to Internet distribution.
• The DOJ consent decree and the FCC order lay the foundation for ensuring that the Internet TV enjoys the Communications Act protections from the abuse of market power.
• The DOJ has tackled the problem of vertical integration more effectively than has been the case in decades.

Enforcement

These conditions will be enforceable and the enforcement mechanisms have been strengthened in two ways.

• The Federal Communications Commission has outlined improvements in its complaint process to accelerate dispute resolution and give.
• Most importantly, the Department of Justice will have the ability to enforce a consent decree.

These two improvements will work hand in hand. Since Comcast will have a strong incentive to avoid being hauled into the antitrust court, it will have an incentive to bargain in good faith and resolve disputes at the FCC.

Progress and Challenges

In our view the proposed final judgment accomplishes the immediate goals of the merger review and then some. Consumers and competition will be better off as a result of the judgment than if the merger had been denied. That does not mean there is not more work to be done. Monitoring and enforcement will have to be vigilant and aggressive. The conditions in the Proposed Final Judgment are not static by any stretch of the imagination. They seek to ensure that Comcast-NBC affords the same treatment to OVD competitors that MVPD and OVPD participants secure in the marketplace. Thus, the DOI will have to closely monitor the development of competition in this space to enforce.

Moreover, the complaint lays the basis for broader Section I or Section II action against other operators in the PVDI/MVPD sector. The Department has now established the product and geographic market definitions, the structural sources of horizontal market power and vertical leverage, and the behaviors that would constitute anticompetitive conduct that seeks to defend or extend the market power of the cable/broadband access companies.

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Parul Desai Consumers Union 1101 17th Street, NW., Suite 500 Washington, D.C. 20026

From: Noelle Levesque
To: AIR–Antitrust—Internet
Subject: Comcast takeover of NBC Universal
Date: Tuesday, January 18, 2011 6:42:45 PM

DO NOT APPROVE THIS!!!!!!!!!!
THIS IS GOING TO STIFLE COMPETITION!!!!!!!!!!
CORPORATION TAKING OVER OTHER CORPORATIONS IS NOT GOOD FOR THE AMERICAN PEOPLE!!!!!!!!!
NBC UNIVERSAL NEEDS TO BE BROKEN UP INTO SMALLER COMPANIES!!!!!!!!!!

Noelle

From:
To: ATR–OPS Citizen Complaint Center
Subject: Comcast + NBC = The antithesis of LAW + ECONOMICS + JUSTICE FOR THE AMERICA = CAPITULATION AND BETRAYAL of the PEOPLE
Date: Sunday, January 23, 2011 9:12:06 PM

ANTITRUST DEPARTMENT

What a disgrace. To permit further media concentration by an industry pariah. I'll never forget Brian Robert's father (Ralph Roberts) sitting behind him at a hearing before a Congressional Committee, as if this were a small Father and Son operation representing the American Dream in a festival of generosity to the American PEOPLE, rather than showing it for what it is, a cannibalistic, predatory mega-oligopolistic American Nightmare. This merger is anathema to competition and the spirit of Antitrust, Justice, the Protection of the American People from concentration in industries where there are few competitors, high barriers to entry, anticompetitive behaviour by the would be acquisitionor, predatory behaviour, and all of the earmarks for the disapproval of a merger.

You caved.

You are fodder for the lobbyists.

You completely gave away the store, burned down the barn, and salted the earth that is the landscape of the American Media System.

Shame.

In my ultimate disgust and revulsion you have capitulated to Corporacracy.

Already they (COMCAST) have trotted out 2 new cable channels to broadcast reruns, [which they are running on another channel I MONETISE their new channels by running commercials on the reruns, have failed to fix their ISP so that they can handle Expose' and Spaces on Safari. Their abuse, exploitation, anticompetitive behaviour, and predation will undoubtedly continue unabated, thanks to a Government which is apparently of the PERSONS, by the PERSONS and FOR THE PERSONS.

Too bad PEOPLE couldn't flood you with Lobbyists the way COMCAST obviously did, or maybe you would have followed the Law and repudiated the merger. Oh Well, another victory for EVIL.

I hate to engage in hyperbole, and ad hominem, but in this case, I'm afraid the comments are warranted,

YOU ARE A DISGRACE TO THE SPECIES,

SINCERELY

Chris Muse, ESQ

From: Sent: Thu 2/3/2011 6:58 PM
To: ASKDO3
Cc:
Subject: USDO1 Comments
Attachments:

I believe that the recent FCC Ruling to allow Comcast and NBC to Merge is

extremely Anti-Consumer in nature and should be looked at Very Closely!!! In that Ruling the FCC requires that Comcast:

''Offers stand alone broadband Internet access services at reasonable prices and of sufficient bandwidth so that customers can access online video services without the need to purchase a cable television subscription from Comcast'' Who is going to Oversee this requirement? As far as I have seen through personal experience; Comcast makes it very difficult to order Internet Service as a ''Stand Alone'' Service and charges a ''Premium Rate'' to do so!!

As a private Citizen and Consumer; I am Very Much Against this merger being allowed to go forward! I have expressed this to the FCC during their Hearing Period as well as to my Congressmen. Please Stop this Merger from taking place.

Thank You.

David Neckolaishen

From: denna
To: ATP–Antitrust—Internet
Subject: Comcast
Date: Tuesday, January 18, 2011 3:39:28 PM

I don't understand a lot about antitrust laws, but I don't understand how giving Comcast the power to take over one of the 3 major networks in the US can possibly be good for anyone but Comcast and those whose hands are in their pockets. This move definitely does not inspire trust that our government is looking out for the little guy/gal. It is hard to believe that this event could occur with out bribery and promises of special favors being a factor. It seems so obvious to the average American that this kind of monopoly can only limit our choices and empty our pockets. So many Americans fear Socialism because they think it would give the government more control over our lives. How much more control could that be, if our lawyers and judges allow such an obvious takeover of our what we are allowed to see on out televisions and computer screens and how much it will cost. This is way too much power for one company to have and frankly it scares me and eats away at my trust in my government. It makes me want to cry in despair when more profit and power are given to companies by a government that claims it is for the people and by the people'

Denna Teece

From:
To: ATR–OPS Citizen Complaint Center
Cc: ATR–Antitrust—Internet
Subject: THE LEFT OVER BUSH FEDERAL ATTORNEYS NEED TO GO
Date: Monday, April 04, 2011 3:00:18 PM

From: Ira Warren Patasnik
To: Eric H. Holder, JR

Dear Attorney General Eric H Holder:

It seems to me that after all the six big monopolies running radio, the justice department did not understand the size of the NBC Comcast merger.

Evidently you and the Attorneys in the Justice Department do not comprehend what defines a Monopoly. The only logical reason is that when George W Bush was president, he fired all the attorneys and hired these corporate thug attorneys from the Global Monopolies that now own all the American Corporations that are Foreign owned.

The reason that you can not enforce the Anti Trust laws, Wall St Laws and Banking Laws is because the left over attorneys from the Bush Administration are still in the Justice Department. A Justice Department that let wall street sell off all of Corporate America to foreign ownership so that we don't build anything here anymore because we don't own any of our companies. Your justice department let Exxon Mobil merge under the Bush administration owned by the same Rockefeller Family that Teddy Roosevelt broke up as standard oil in 1911. Now it is time to take back ownership of American Companies and break up EXXON Mobil and all these monopolies.

Wall St sold off US Steel to Japan who disassembled the factory and reassembled it in Japan and shut down Pittsburgh. Wall St has liquidated the United States and sold us out to foreign ownership and the justice department did nothing about it. You need to go after all the criminals on Wall St. You need to break up all the Monopolies. You can not do that with the corrupt attorneys left over from the Bush Administration as they are funded and paid for by the global monopolies and their lobbyist.

The real estate people dropped the values of the house down to 25% of original value, while the banks kept the inflated mortgages at their original value. The values of all mortgages should be cut to 25% of the original loan. If the property is only worth 25% of its original value then the mortgage is only worth 25% of its original value. Cutting the value of the mortgage makes more sense than foreclosing on homeowners. When these properties go to foreclosing then to a short sale, why are you using tax payer dollars to pay off the rest of the mortgage when the value of the house dropped. Since the Homeowner lost the value of the house, so should the bank. If you put a $100,000 in stock and it value drops to $20,000 and you sell you loose $80,000. It should work the same way for the banks. Using tax payer dollars in short sales is a ponzi scheme for the banks.

The scum on Wall St keeps using speculators to drive up the price of oil. When the per barrel price drops, the price of gas keeps going up.

You have done nothing to investigate the speculators on Wall Street or the corrupt oil lobbyist.

Global Oil Monopolies own all American Oil Companies thanks to Wall St. The first thing they do is stop drilling in this country. Then deliberately cause spills to get us to stop drilling. The reason for these accidents is that the Bush Administration took away the EPA from all safety regulation on oil rigs and BP has had violations since 2002 on their rigs.

Now the Food and Drug Administration no longer checks on the safety of food imported from other countries. Now our food supply is getting polluted.

Haliburton is doing fracking in Northern Penn and Southern Upstate NY. They put 1,000 toxic chemicals in the ground to get the natural gas out of the ground and in turn pollute the water supply causing cancer in people and animals in the area. Again you attorneys did nothing.

It is amazing all the damage the global monopolies, lobbyist, Wall St. and the banks have done to this country and because of the crooked paid off attorneys in the justice department that are leftovers from the Bush Administration, the ones he put in to the justice department as Federal Prosecutors when he first became president, you department has done nothing to go after the monopolies lobbyist Wall Street and the Banks.

We don't own anything here. We don't build anything here. All because you don't enforce the Anti Trust laws to break up monopolies, Banking laws that separate savings from commercial from investment and prevent Wall St from breaking up American Companies and selling them off to foreign ownership. No foreign company should own more than 49% of an American company and since Wall St committed all this fraud, we have the right to take back these companies. All American Companies should be building our products here not overseas as Wall St has caused.

The time has come that all the Federal Attorneys that Bush put into the Justice department leave because they are all paid for and funded by global monopolies. It is obvious that they don't understand what a monopoly is when they allowed NBC and Comcast to merge. Today 6 monopolies run the broadcast media and the Justice department has done nothing about that. We have judges on the supreme court who think a corporation is a person and should buy political adds. That means that while Haliburton is polluting the water supply they can buy an add and tell you that is good for you health. Again, Republican Scum Denis Scalia on the supreme court has no idea what a monopoly is.

It is bad enough the Republicans messed this country up with Deregulation. However, these laws are still on the books and you need to go after the monopolies, the banks and Wall St.

The first thing you need to do is get rid of all that corrupt Republican Garbage of Federal Attorneys funded by the global monopolies that Bush put into the Justice Department.

Reagan Screwed this country with Deregulation. Bush Cheney and Rumsfeld set up 9–11 and committed treason. They let the oil companies run this country for 8 years. Let Mobil merge and have Haliburton owning a pipe line from Saudi Arabia through Iraq into Kuwait and out into Aphghanistan that only gives us 2% of its oil while our kids protect Dick Cheney's company pipe line. While all of Alaska's oil is sold to Japan.

Perhaps you forgot that George Bushes Grandfather was Prescott Bush an American Industrialist who helped fund Adolph Hitler to power and was arrested with 14 other Americans for trying to over through the US Government. What kind of Justice Department does not go after all these criminals and prosecute an administration who committed treason to make a rich oil industry richer.

It is pretty sickening when the Justice Department lets us get taken over by foreign

monopolies and lets criminals in the banking industry and Wall St get away with liquidating the United States and selling us off to foreign ownership and does not do a thing about it because we still have the federal attorneys left over from the Bush Administration who allowed these foreign monopolies rob this country blind. It is time for these federal attorneys to be fired and for the Justice Department to address all these issues.

It would be nice if you send me some kind of response as to when you will fire these corrupt left over federal attorneys form the Bush Cheney Administration. Just remember if Jeb Bush, N Sanders Saul and Katherine Harris never rigged the election, Bush and Cheney never would have been in the white house and 9–11 and the Pentagon hit by a missile never would have happened. You know it and I know it. Now how about firing these corrupt bastards who have no clue as to what defines a monopoly

Sincerely,

Ira

Ira Warren Patasnik

From: Bill Dunn
Sent: Sunday, March 20, 2011 7:12 PM
To: Bhat, Shobitha
Subject: Re: Media Conglomerates, Giant Banks, rapid business consolidation.

I read most of the rules applicable to the ComCast DOS and DONTS—It reminds me that one should let the fox into the hen house and tell him not to touch the chickens. The restrictions will be challenged and challenged, much will change and the only people that will really know what is going on is the lawyers, the company and you. By the time the consumer realizes what has happened it will be too late for them. SO MY QUESTION—WHY LET THE FOX IN THE HEN HOUSE IN THE FIRST PLACE? HOPEFULLY THE SAME THING WILL NOT BE REPEATED WITH THE AT&T AND T–MOBILE DEAL!!!!!!!!!!

[FR Doc. 2011–14629 Filed 6–13–11; 8:45 am]

BILLING CODE 4410–11–M

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Finance Committee of the Board of Directors; Notice

DATE AND TIME: The Finance Committee of the Legal Services Corporation will meet telephonically on June 16, 2011. The meeting will begin at 11 a.m., Eastern Standard Time, and will continue until the conclusion of the Committee's agenda.

LOCATION: F. William McCalpin Conference Center, Legal Services Corporation Headquarters Building, 3333 K Street, NW., Washington, DC 20007.

PUBLIC OBSERVATION: Members of the public who are unable to attend but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below but are asked to keep their telephones muted to eliminate background noises. From time to time, the presiding Chair may solicit comments from members of the public present for the meeting.

CALL-IN DIRECTIONS:

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please ''MUTE'' your telephone immediately.

* * * * *

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of agenda
2. Approval of the minutes of the Committee's meeting of April 15, 2011
3. Public Comment regarding LSC's fiscal year 2013 ''budget mark.''
   - Presentation by Robert Stein on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defense (SCLAID)
   - Presentation by Don Saunders on behalf of National Legal Aid and Defender Association
   - Comments by other interested parties
4. Consider and act on other business
5. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

ACCESSIBILITY: LSC complies with the American's with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals who need other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 9, 2011.

Victor M. Fortuno,

Vice President, General Counsel & Corporate Secretary.

[FR Doc. 2011–14746 Filed 6–10–11; 11:15 am]

BILLING CODE 7050–01–P

MARINE MAMMAL COMMISSION

Classified National Security Information

[Directive 11–01]

AGENCY: Marine Mammal Commission.

ACTION: Notice.

SUMMARY: This notice sets out the establishment of the Marine Mammal Commission's (MMC) policy on classified information, as directed by Information Security Oversight Office regulations.

FOR FURTHER INFORMATION CONTACT: Catherine Jones, Administrative Officer, Marine Mammals Commission, (301) 504–0087.

SUPPLEMENTARY INFORMATION: The following is the text of MMC's Directive 11–01 of October 25, 2010:

Directive 11–01 October 25, 2010

1. *PURPOSE.* This directive implements the requirements of Executive Order 13526, ''Classified National Security Information,'' and 32 CFR part 2001, ''Classified National Security Information,'' by establishing Marine Mammal Commission policy on classified information.

2. *REFERENCES.*

a. Executive Order 13526, ''Classified National Security Information,'' December 29, 2009

b. 32 CFR part 2001, ''Classified National Security Information,'' June 25, 2010

3. *SCOPE.* This directive applies to all Marine Mammal Commission employees.

4. *BACKGROUND.* The Marine Mammal Commission is a micro agency of 14 full time permanent employees. Three employees have current Secret clearances and one staff has a Top Secret clearance. These employees require clearances because they attend meetings where classified information may be discussed. None of the Commission staff have approved Information Security Oversight Office (ISOO) original classification authority. The Commission does not originate, receive, or store classified documents.

5. *POLICY.* It is Commission policy to ensure the safeguarding of national security information in accordance with established rules and regulations. The Commission will:

a. Designate a senior official to direct and administer the Commission's security program

(1) The senior official will oversee the Commission's program established under this directive and institute procedures consistent with directives issued pursuant to this order to prevent

unnecessary access to classified information, including procedures that require a need for access to classified information and the insurance that the number of persons granted access to classified information meets the mission needs of the Commission while also satisfying operational and security requirements and needs

(2) The senior agency official or the Executive Director shall take appropriate and prompt corrective action when a violation or infraction occurs and notify the Director of the Information Security Oversight Office

b. Ensure that the Commission's GSA approved security container is available to store classified documents should the Commission receive such documents

c. Instruct Commission staff on the proper procedures for handling classified information

6. *RESPONSIBILITIES*.

a. The Executive Director will appoint in writing a Security Manager

b. The Security Manager will ensure that authorized persons who have access to classified information are responsible for:

(1) Protecting it from persons without authorized access to include securing it in an approved container

(2) Meeting the safeguarding requirements

(3) Ensuring that classified information is not communicated over unsecured voice or data circuits, in public conveyances or places, or in any other manner that permits interception by unauthorized persons

(4) Establish an information security training program

c. Employees whose duties involve the handling of classified information will be rated on

their performance on the management of classified information

7. *DISCIPLINARY AND CORRECTIVE ACTION*. Failure to safeguard classified national security information may result in disciplinary action. Applicable consequences may include the following: Reprimand, suspension without pay, removal from federal service, loss or denial of access to classified information, or other sanctions in accordance with applicable laws and regulations.

8. *EFFECTIVE DATE*. This directive shall take effect on October 25, 2010.

October 25, 2010.

Timothy J. Ragen,

Executive Director.

Editor's note: This document was received by the Office of the Federal Register on June 6, 2011.

[FR Doc. 2011–14593 Filed 6–13–11; 8:45 am]

BILLING CODE P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Friday, June 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Final Rule—Section 701.34 of NCUA's Rules and Regulations, Member Survey Sample Data to Meet Low-Income Designation.
2. Interim Final Rule—Part 750 of NCUA's Rules and Regulations, Technical Correction, Golden Parachutes and Indemnification Payments.
3. Advance Notice of Proposed Rulemaking—Part 703 of NCUA's Rules and Regulations, Derivatives.
4. Insurance Fund Report.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Friday, June 17, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Waiver Request pursuant to Section 704.1(b) of NCUA's Rules and Regulations. Closed pursuant to some or all of the following exemptions (4) and (6).
2. Consideration of Supervisory Activity. Closed pursuant to some or all of the following: exemptions (8), (9)(A)(ii) and 9(B).
3. Personnel (2). Closed pursuant to exemption (2).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–14891 Filed 6–10–11; 4:15 pm]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2011–0123]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 445, Request for Approval of Official Foreign Travel.
2. *Current OMB approval number:* 3150–0193.
3. *How often the collection is required:* On occasion.
4. *Who is required or asked to report:* Non-Federal consultants, contractors and NRC invited travelers (i.e., non-NRC employees).
5. *The number of annual respondents:* 50.
6. *The number of hours needed annually to complete the requirement or request:* 50.
7. *Abstract:* Form 445, ''Request for Approval of Foreign Travel,'' is supplied by consultants, contractors, and NRC invited travelers who must travel to foreign countries in the course of conducting business for the NRC. In accordance with 48 CFR 20, ''NRC Acquisition Regulation,'' contractors traveling to foreign countries are required to complete this form. The information requested includes the name of the Office Director/Regional Administrator or Chairman, as appropriate, the traveler's identifying information, purpose of travel, listing of the trip coordinators, other NRC travelers and contractors attending the same meeting, and a proposed itinerary.

Submit, by August 15, 2011, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

The public may examine and have copied for a fee publicly available documents, including the draft supporting statement, at the NRC's

Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. OMB clearance requests are available at the NRC Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2011–0123. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2011–0123. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to: *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 8th day of June 2011.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2011–14589 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0133]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 19, 2011, to June 1, 2011. The last biweekly notice was published on May 31, 2011 (76 FR 31369).

ADDRESSES: Please include Docket ID NRC–2011–0133 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov*. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0133. Address questions about NRC dockets to Carol Gallagher, *telephone:* 301–492–3668; *e-mail: Carol.Gallagher@nrc.gov*.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at 301–492–3446.

You can access publicly available documents related to this notice using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0133.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the

Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1–F21, 11555 Rockville Pike (first floor), Rockville, Maryland 20852. The NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov*, or by telephone at 301–415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-*

submittals.html. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html*, by e-mail at *MSHD.Resource@nrc.gov*, or by a toll-free call at 866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/*, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment, which is available for public inspection at the Commission's PDR. (For more information, see the **ADDRESSES** section.)

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: March 31, 2011.

Description of amendment request: The amendments would relocate certain surveillance frequencies to a licensee-controlled program (the Surveillance Frequency Control Program, SFCP) in accordance with Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler TSTF–425, ''Relocate Surveillance Frequencies to Licensee Control—RITSTF [Risk Informed Technical Specification Task Force] Initiative 5b,'' Revision 3 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML090850642). The licensee proposes an administrative change to TSTF–425, Revision 3, which would allow it to retain the definition of ''Staggered Test Basis'' that also appears in a portion of the plants' technical specifications (TSs) that are not subject to TSTF–425. The licensee also proposes to deviate from TSTF–425 by making the changes recommended to the TSTF in the NRC letter dated April 14, 2010 (ADAMS Accession No. ML100990099), regarding the TS Bases.

The NRC staff issued a Notice of Availability for TSTF–425 in the **Federal Register** on July 6, 2009 (74 FR 31996). The notice included a model safety evaluation and a model no significant hazards consideration (NSHC) determination. In its application dated March 31, 2011, the licensee affirmed the applicability of the model NSHC determination which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of NSHC, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of any accident previously evaluated?

Response: No.

The proposed change relocates the specified frequencies for periodic surveillance requirements to licensee control under a new Surveillance Frequency Control Program. Surveillance frequencies are not an initiator to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The systems and components required by the technical specifications for which the surveillance frequencies are relocated are still required to be operable, meet the acceptance criteria for the surveillance requirements, and be capable of performing any mitigation function assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

No new or different accidents result from utilizing the proposed change. The changes do not involve a physical alteration of the plant (*i.e.,* no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. In addition, the changes do not impose any new or different requirements. The changes do not alter assumptions made in the safety analysis. The proposed changes are consistent with the safety analysis assumptions and current plant operating practice.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

Response: No.

The design, operation, testing methods, and acceptance criteria for systems, structures, and components (SSCs), specified in applicable codes and standards (or alternatives approved for use by the NRC) will continue to be met as described in the plant licensing basis (including the Final Safety Analysis Report and Bases to TS), since these are not affected by changes to the surveillance frequencies. Similarly, there is no impact to safety analysis acceptance criteria as described in the plant licensing basis. To evaluate a change in the relocated surveillance frequency, [Arizona Public Service Company] will perform a probabilistic risk evaluation using the guidance contained in NRC approved [Nuclear Energy Institute (NEI)] 04–10, Rev. 1 in accordance with the TS SFCP. NEI 04–10, Rev. 1, methodology provides reasonable acceptance guidelines and methods for evaluating the risk increase of proposed changes to surveillance frequencies consistent with Regulatory Guide 1.177.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment requests: May 11, 2011.

Description of amendment requests: The amendment would modify a note within Technical Specification 3.3.1, ''Reactor Protective System (RPS) Instrumentation—Operating,'' to change the value at which the RPS trip function, Steam Generator Pressure-Low, is bypassed from 785 psig to 785 psia. The revision corrects an administrative error that occurred during Calvert Cliffs' conversion to the Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed administrative change to correct the unit of measure listed in note (c) of Technical Specification 3.3.1 to read psia vice psig does not affect any analyzed accident initiators, nor does it affect the unit's ability to successfully respond to any previously evaluated accident. In addition the proposed does not change the operation or maintenance that it performed on plant equipment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed administrative change corrects the unit of measure listed in note (c) of Technical Specification 3.3.1 to read psia vice psig. The proposed change does not involve a physical alteration to the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation.

Therefore it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed administrative change corrects the unit of measure listed in note (c) of Technical Specification 3.3.1 to read psia vice psig. Since this is an administrative change the safety functions of plant equipment and their response to any analyzed accident scenario are unaffected by this proposed change and thus there is no reduction in any margin of safety.

Therefore the proposed change does not involve a significant reduction in the margin of safety for the operation of each unit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202.

NRC Branch Chief: Nancy L. Salgado.

Entergy Nuclear Operations, Inc., (ENO) Docket No. 50–255, Palisades Nuclear Plant, Van Buren County, Michigan

Date of amendment request: April 6, 2011.

Description of amendment request: The proposed amendment would revise Appendix A, Technical Specifications (TS), to allow extension of the ten-year plus 15-month frequency of the Palisades Nuclear Plant Type A, or Integrated Leak Rate Test (ILRT) that is required by TS 5.5.14, to 15 years on a permanent basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment involves changes to the PLP [Palisades Nuclear Plant] containment leakage rate testing program. The proposed amendment does not involve a physical change to the plant or a change in the manner in which the plant is operated or controlled. The primary containment function is to provide an essentially leak tight barrier against the uncontrolled release of radioactivity to the environment for postulated accidents. As such, the containment itself and the testing requirements to periodically demonstrate the integrity of the containment exist to ensure the plant's ability to mitigate the consequences of an accident, do not involve any accident precursors or initiators.

Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased by the proposed amendment.

The proposed amendment adopts the NRC-accepted guidelines of NEI [Nuclear Energy Institute] 94–01, Revision 2–A, for development of the PLP performance-based testing program. Implementation of these guidelines continues to provide adequate assurance that during design basis accidents, the primary containment and its components would limit leakage rates to less than the values assumed in the plant safety analyses. The potential consequences of extending the ILRT interval to 15 years have been evaluated by analyzing the resulting changes in risk. The increase in risk in terms of person-rem per year within 50 miles resulting from design basis accidents was estimated to be acceptably small and determined to be within the guidelines published in RG [Regulatory Guide] 1.174. Additionally, the proposed change maintains defense-in-depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. ENO has determined that the increase in conditional containment failure probability due to the proposed change would be very small.

Therefore, it is concluded that the proposed amendment does not significantly increase the consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the

probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 2–A, for the development of the PLP performance-based leakage testing program, and establishes a 15-year interval for the performance of the containment ILRT. The containment and the testing requirements, to periodically demonstrate the integrity of the containment, exist to ensure the plant's ability to mitigate the consequences of an accident do not involve any accident precursors or initiators. The proposed change does not involve a physical change to the plant (*i.e.,* no new or different type of equipment will be installed) or a change to the manner in which the plant is operated or controlled.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment adopts the NRC-accepted guidelines of NEI 94–01, Revision 2–A, for the development of the PLP performance-based leakage testing program, and establishes a 15-year interval for the performance of the containment ILRT. This amendment does not alter the manner in which safety limits, limiting safety system setpoints, or limiting conditions for operation are determined. The specific requirements and conditions of the containment leakage rate testing program, as defined in the TS, ensure that the degree of primary containment structural integrity and leak-tightness that is considered in the plant's safety analysis is maintained. The overall containment leakage rate limit specified by the TS is maintained, and the Type A, Type B, and Type C containment leakage tests would be performed at the frequencies established in accordance with the NRC-accepted guidelines of NEI 94–01, Revision 2–A.

Containment inspections performed in accordance with other plant programs serve to provide a high degree of assurance that the containment would not degrade in a manner that is not detectable by an ILRT. A risk assessment using the current PLP PSA [probabilistic safety assessment] model concluded that extending the ILRT test interval from 10 years to 15 years results in a very small change to the PLP risk profile.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

NRC Branch Chief: Robert J. Pascarelli.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 25, 2011.

Description of amendments request: The proposed licensing amendment request would revise the Crystal River Unit 3 (CR–3) Improved Technical Specifications (ITS) 3.7.19, ''Diesel Driven EFW [Emergency Feedwater] (DD–EFW) Pump Fuel Oil, Lube Oil, Starting Air,'' Condition A and ITS Surveillance Requirement 3.7.19.1, in order to increase the ITS minimum required stored diesel fuel for the DD–EFW pump in the fuel oil supply tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LAR [license amendment request] proposes to revises the Diesel Driven Emergency Feedwater (DD–EFW) pump (EFP–3) fuel oil supply tank (DFT–4) action condition and surveillance values to ensure that the EFW pump will remain capable of performing the design function of operating continuously for up to seven days. The proposed amendment provides the same functional requirement as previously approved.

The consequences of an accident refer to the impact on both plant personnel and the public from any radiological release associated with the accident. The Emergency Feedwater (EFW) System removes decay heat to prevent a radiological release. A more conservative action condition and surveillance value restores design margin and provides assurance that the equipment supplied by the EFW System will operate correctly and within the assumed timeframe to perform their mitigating functions. The administrative controls that have been established are an acceptable short term correction along with this LAR. The EFW System is used for accident mitigation and is not an initiator of design basis accidents. Therefore, the probability of previously analyzed events is not affected by this change. No capability or design functions of EFP–3 or the EFW System will change. The initial conditions for accidents that require EFW and accident mitigation capability of the EFW System will remain unchanged.

EFP–3 and DFT–4 are mitigating components and are not initiators for any analyzed accident.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Improved Technical Specifications (ITS) Condition will ensure equipment is restored to an operable status in accordance with previously approved timeframes and functional levels. The proposed Surveillance Requirement (SR) will ensure the same functional requirement as the previously approved SR. The more conservative DFT–4 tank levels will provide additional assurance that the EFP–3 can provide the seven day operation that is required.

No new plant configurations or conditions are created by the proposed ITS Condition or SR. Therefore, the proposed amendment cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in a margin of safety.

The proposed ITS Condition and SR ensure adequate fuel oil inventory is available to operate EFP–3 for seven days. The proposed changes replace the calculated fuel oil inventory values with a more conservative value. The proposed SR ensures the same functional requirement for a seven day supply of fuel oil for EFP–3 as was previously approved. Similarly, the proposed ITS Condition ensures the same functional level as currently approved by requiring that a reduced fuel oil inventory of less than seven days, but more than six days, is restored to the seven day level within 48 hours. Based on the above, the proposed LAR meets the same intent as the currently approved specifications.

The proposed CR–3 ITS and SR, revising the values for DFT–4 fuel storage, will ensure that the EFW System will be able to perform all design functions assumed in the accident analyses. Administrative limits are in place to ensure these parameters remain within analyzed limits.

As such, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, NC 27602.

NRC Branch Chief: Douglas A. Broaddus.

Indiana Michigan Power Company (the licensee), Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: May 3, 2011.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to define a new time limit for restoring inoperable Reactor Coolant System (RCS) leakage detection instrumentation to operable status; and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. These changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Improved Standard Technical Specification Change Traveler TSTF–513, ''Revise PWR [pressurized water reactor] Operability Requirements and Actions for RCS Leakage Instrumentation.'' The availability of this TS improvement was announced in the **Federal Register** on January 3, 2011 (76 FR 189), as part of the consolidated line item improvement process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided an analysis of no significant hazards consideration (NSHC), which is reproduced below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for [leak-before-break] progressing to pipe rupture remains extremely low.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves NSHC.

Attorney for licensee: James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

NRC Branch Chief: Robert J. Pascarelli.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia and Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: April 29, 2011.

Description of amendment request: The proposed amendments would revise the Technical Specification (TS) section 3.4.15 RCS [Reactor Coolant System] Leakage Detection Instrumentation, in accordance with the Technical Specification Task Force Traveler TSTF–513–A, Revision 3, titled ''Revise PWR [Pressurized-Water Reactor] Operability Requirements and Actions for RCS Leakage [detection] Instrumentation.'' Specifically, the proposed amendment would revise the TS to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. The notice of availability for this TS improvement initiative was published in the **Federal Register** on January 3, 2011 (76 FR 189), as part of the consolidated line item improvement process.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The monitoring of RCS leakage is not a precursor to any accident previously evaluated. The monitoring of RCS leakage is not used to mitigate the consequences of any accident previously evaluated.

Therefore, it is concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change maintains sufficient continuity and diversity of leak detection capability that the probability of piping evaluated and approved for Leak-Before-Break progressing to pipe rupture remains extremely low.

Therefore, it is concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change clarifies the operability requirements for the RCS leakage detection instrumentation and reduces the time allowed for the plant to operate when the only TS-required operable RCS leakage detection instrumentation monitor is the containment atmosphere gaseous radiation monitor. Reducing the amount of time the plant is allowed to operate with only the containment atmosphere gaseous radiation

monitor operable increases the margin of safety by increasing the likelihood that an increase in RCS leakage will be detected before it potentially results in gross failure.

Therefore, it is concluded that the proposed change does not involve a significant reduction in a margin of safety.

Based upon the above analysis, SNC concludes that the requested change does not involve a significant hazards consideration, as set forth in 10 CFR 50.92(c), ''Issuance of Amendment.''

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Branch Chief: Gloria Kulesa.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Exelon Generation Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 4, 2010.

Brief description of amendment: The amendment removes an expired time-related item and several typographical errors for the Clinton Power Station Technical Specifications.

Date of issuance: May 26, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 193.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** September 7, 2010 (75 FR 54395).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 2011.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, and PSEG Nuclear, LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: January 6, 2010, as supplemented on August 20, 2010, October 14, 2010, December 6, 2010, and February 7, 2011.

Brief description of amendments: The amendment enables PBAPS, Units 2 and 3, to possess byproduct and special nuclear material from Limerick Generating Station (LGS), Units 1 and 2. Specifically, the revised license paragraph would permit storage of low-level radioactive waste (LLRW) from LGS in the PBAPS LLRW Storage Facility. The PBAPS LLRW Storage Facility currently provides storage for LLRW generated at PBAPS.

Date of issuance: May 31, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–280, Unit 3–282.

Renewed Facility Operating License Nos. DPR–44 and DPR–56: Amendments revised the Facility Operating License.

Date of initial notice in **Federal Register:** November 30, 2010 (75 FR 74094). The supplements dated August 20, 2010, October 14, 2010, December 6, 2010, and February 7, 2011, clarified the application, did not expand the scope of the application as originally noticed, and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: December 15, 2010.

Brief description of amendment: This license amendment modifies the required testing frequency of Surveillance Requirement 3.1.4.2 from ''120 days cumulative operation in MODE 1'' to ''200 days cumulative operation in MODE 1,'' by incorporating U.S. Nuclear Regulatory Commission-approved Technical Specification Task Force (TSTF) change traveler TSTF–460, Revision 0.

Date of issuance: May 19, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 156.

Facility Operating License No. NPF–58: This amendment revised the technical specifications and license.

Date of initial notice in **Federal Register:** February 22, 2011 (76 FR 9825).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 2011.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: December 15, 2010.

Brief description of amendment: This license amendment modifies the requirements for testing control rod scram times following fuel movement within the reactor pressure vessel by incorporating Nuclear Regulatory Commission approved Technical Specification Task Force (TSTF) change traveler TSTF–222–A, Revision 1.

Date of issuance: May 19, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 157.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register:** February 22, 2011 (76 FR 9824).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 2011.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: May 18, 2010, as supplemented by letters dated March 1 and May 2, 2011.

Brief description of amendments: The amendments revised Technical Specification (TS) 6.8.3.I, ''Containment Post-Tensioning System Surveillance Program,'' and the related TS Surveillance Requirement 4.6.1.6, ''Containment Prestressing System,'' for consistency with the requirements of the containment inservice inspection program mandated by paragraph 50.55a(g)(4) of Title 10 of the *Code of Federal Regulations* (10 CFR), for components classified as Code Class CC. Specifically, the amendments deleted the reference to the specific American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) edition in TS 6.8.3.l and replaced it with the requirement to use the applicable ASME Code, Section XI edition and addenda for successive 10-year inservice inspection intervals in accordance with 10 CFR 50.55a, ''Codes and standards.'' The changes have no impact on the implementation of the Containment Post-Tensioning System Surveillance Program or the design basis of STP, Units 1 and 2.

Date of issuance: May 27, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1–196; Unit 2–184.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in **Federal Register:** September 21, 2010 (75 FR 57529). The supplemental letter dated March 1, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, but did change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on September 21, 2010 (75 FR 57529). The revised proposed no significant hazards consideration determination was published in the **Federal Register** on March 22, 2011 (76 FR 16012).

The supplemental letter dated May 2, 2011, provided additional information that clarified the application, did not expand the scope of the application as noticed on March 22, 2011, and did not change the staff's revised proposed no significant hazards consideration determination as published in the **Federal Register** on March 22, 2011 (76 FR 16012).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 27, 2011.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket No. 50–281, Surry Power Station, Unit 2, Surry County, Virginia

Date of application for amendments: December 16, 2010.

Brief Description of amendments: These amendments revised the inspection scope and repair requirements of Technical Specification (TS) Section 6.4.Q, ''Steam Generator Program,'' and to the reporting requirements of TS Section 6.6.A.3, ''Steam Generator Tube Inspection Report.'' The proposed changes would be applicable to Surry Unit 2 during Refueling Outage 23 and the subsequent operating cycle.

Date of issuance: May 20, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 273.

Renewed Facility Operating License No. DPR–37: Amendment changes the licenses and the technical specifications.

Date of initial notice in **Federal Register:** April 19, 2011 (76 FR 21923).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 20, 2011.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2 (Surry 1 and 2), Surry County, Virginia

Date of application for amendments: May 6, 2010.

Brief Description of amendments: These amendments revised the licenses and the Technical Specifications (TSs) to provide new limits that are valid to 48 effective full-power years for Surry 1 and 2.

Date of issuance: May 31, 2011.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: Unit 1–274 and Unit 2–274.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the licenses and the TSs.

Date of initial notice in **Federal Register:** September 7, 2010 (75 FR 54396).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 2011.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 2nd day of June 2011.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–14680 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Rensselaer Polytechnic Institute

[Docket No. 50–225; NRC–2008–0277]

Rensselaer Polytechnic Institute Critical Experiments Facility; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC, the Commission) is considering issuance of a renewed Facility Operating License No. CX–22, to be held by the Rensselaer Polytechnic Institute (RPI, the licensee), which would authorize continued operation of the Rensselaer Polytechnic Institute Critical Experiments Facility (RCF), located in Schenectady, Schenectady County, New York. Therefore, as required by Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.21, the NRC is issuing this Environmental Assessment (EA) and Finding of No Significant Impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would renew Facility Operating License No. CX–22 for a period of twenty years from the date of issuance of the renewed license. The proposed action is in accordance with the licensee's application dated November 19, 2002, as supplemented by letters dated July 21, July 28, and September 3, 2008; June 28, August 31, October 14, and October 28, 2010; and February 14 and May 9, 2011. In accordance with 10 CFR 2.109, the existing license remains in effect until the NRC takes final action on the renewal application.

Need for the Proposed Action

The proposed action is needed to allow the continued operation of the RCF to routinely provide teaching, research, and services to numerous institutions for a period of 20 years.

Environmental Impact of the Proposed Action

The NRC staff has completed its safety evaluation of the proposed action to issue a renewed Facility Operating License No. CX–22 to allow continued operation of the RCF for a period of twenty years and concludes there is reasonable assurance that the RCF will continue to operate safely for the additional period of time specified in the renewed license. The details of the NRC staff's safety evaluation will be provided with the renewed license that will be issued as part of the letter to the licensee approving the license renewal application. This document contains the environmental assessment of the proposed action.

The RCF is located on the south bank of the Mohawk River, approximately 24 kilometers (km) (15 miles (mi)) northwest of the main RPI campus. The building housing the RCF is a stand-alone concrete structure previously owned by the American Locomotive Company. An exhaust stack discharges RCF ventilation 15 meters (m) (50 feet (ft)) above ground level. A chain-link fence and controlled access gates enclose the exclusion area surrounding the building. The exclusion area measures approximately 30 m (100 ft) by 30 m (100 ft). The nearest permanent residence is located 350 m (1150 ft) to the southeast.

The RCF is a light-water-moderated critical facility licensed to operate at a maximum steady-state power level of 100 watts thermal power (W(t)). The core is located in a 7600 liter (l) (2000 gallon (gal)) stainless steel tank with an inner diameter of 2.1 m (7 ft). The reactor is fueled with low enriched uranium SPERT fuel pins. Reactivity control is provided by four Boron-10 control rods. A detailed description of the reactor can be found in the RCF Safety Analysis Report (SAR). There have been no major modifications to the facility operating license since Amendment No. 7, dated July 7, 1987, which ordered the licensee to convert the reactor to use low-enriched uranium fuel.

The licensee has not requested any changes to the facility design or operating conditions as part of the application for license renewal. No changes are being made in the types or quantities of effluents that may be released off site. The licensee implements a radiation protection program to monitor personnel exposures and radiation dose at the site boundary. As discussed in the NRC staff's safety evaluation, the radiation protection program is appropriate for the types and quantities of effluents expected to be generated by continued operation of the reactor. Accordingly, there would be no increase in routine occupational or public radiation exposure as a result of license renewal. As discussed in the NRC staff's safety evaluation, the proposed action will not significantly increase the probability or consequences of accidents. Therefore, license renewal would not change the environmental impact of facility operation. The NRC staff evaluated information contained in the licensee's application and data reported to the NRC by the licensee for the last five years of operation to determine the projected radiological impact of the facility on the environment during the period of the renewed license. The NRC staff finds that releases of radioactive material and personnel exposures were all well within applicable regulatory limits, and often below detection limits. Based on this evaluation, the NRC staff concludes that continued operation of the reactor should not have a significant environmental impact.

I. Radiological Impact

Environmental Effects of Reactor Operations

Gaseous effluents are discharged from the reactor room via the exhaust stack. A continuous air monitor samples the air above the reactor tank for particulate beta-gamma activity. There are no nuclides of detectable concentration in the RCF gaseous effluent stream. This is consistent with the low power and infrequent operation of the RCF. No radioactivity associated with gaseous effluents was reported to the NRC during the reporting period from January 1, 2005, to December 31, 2009. Accordingly, the licensee has demonstrated compliance with the limits specified in 10 CFR part 20, Appendix B for air effluent releases. The maximum dose rate to a member of the general public due to gaseous effluents is expected to be less than 0.01 milliSievert per year (mSv/yr) (1 millirem per year (mrem/yr)). This demonstrates compliance with the annual dose limit of 1 mSv (100 mrem) set by 10 CFR 20.1301. Additionally, this potential radiation dose demonstrates compliance with the annual air emissions dose constraint of 0.1 mSv (10 mrem) specified in 10 CFR 20.1101(d).

Liquid effluents are discharged to the Mohawk River or an external holding container. Due to low neutron flux and limited operations, the RCF pool water does not accumulate significant amounts of activation products. Liquid effluents are sampled for nuclide activity prior to discharge. Liquid waste that does not meet the discharge requirements of 10 CFR 20.2003 for disposal by release into sanitary sewerage, is retained onsite in an appropriate container until proper disposal can be arranged. Liquid radioactive releases reported to the NRC were within the limits specified in 10 CFR part 20, Appendix B for liquid effluents. During the reporting period from January 1, 2005, to December 31, 2009, two discharges of liquid effluent with no detectable activity were made to the Mohawk River for the purpose of flushing the storage tank.

The licensee did not package or ship any solid low-level radioactive waste during the reporting period from January 1, 2005, to December 31, 2009, nor does the licensee anticipate shipping any during the period of the renewed license. To comply with the Nuclear Waste Policy Act of 1982, RPI has entered into a contract with the U.S. Department of Energy (DOE) that provides that DOE retains title to the fuel utilized at the RCF and that DOE is obligated to take the fuel from the site for final disposition. The licensee does not anticipate the need to ship any high-level radioactive waste during the 20-year period of license renewal.

The RPI radiation safety officer tracks personnel exposures, which are usually less than 0.1 mSv (10 mrem) per year. Personnel exposures reported to the NRC were within the limits set by 10 CFR 20.1201, and ALARA (As Low As is Reasonably Achievable). No changes in reactor operation that would lead to an increase in occupational dose are

expected as a result of the proposed action.

The licensee conducts an environmental monitoring program to measure the dose rates at locations around the RCF. Dose measurements are made quarterly using thermoluminescent dosimeters. The monitoring program comprises four measurements at the exclusion area boundary and two measurements at the site boundary. An additional measurement for control purposes is taken at the General Electric Guard Station more than 1.6 km (1 mi) away. During the reporting period from January 1, 2005, to December 31, 2009, measured doses at the site boundary were within 0.1 mSv/yr (10 mrem/yr) (the detectable limit) of the control measurement. This demonstrates compliance with the limits set by 10 CFR 20.1301. Based on the NRC staff's review of the past five years of data, the NRC staff concludes that operation of the RCF does not have any significant radiological impact on the surrounding environment. No changes in reactor operation that would affect off-site radiation levels are expected as a result of license renewal.

Environmental Effects of Accidents

Accident scenarios are discussed in chapter 13 of the RCF SAR. The maximum hypothetical accident (MHA) is the failure of an experiment leading to a release of airborne radioactive material into the reactor room and into the environment. The licensee conservatively calculated doses to facility personnel and the maximum potential dose to a member of the public. The NRC staff performed independent calculations to verify that the doses represent conservative estimates for the MHA. As discussed in the NRC staff's safety evaluation, the MHA will not result in occupational doses or doses to members of the general public in excess of the limits specified in 10 CFR part 20. The proposed action will not increase the probability or consequences of accidents.

II. Non-Radiological Impact

The RFC uses standard city water as a neutron moderator and core shielding. Water usage is minimized by draining the reactor tank into a storage tank upon shutdown for reuse during the following operating period. All surfaces that come into contact with the moderator are stainless steel, thus eliminating the need for routine filtration and demineralization of the moderator to prevent corrosion. Evaporative losses of the moderator are minimal, and are replaced with city water when necessary. The RCF core does not produce sufficient power to significantly heat the moderator. As a result, there are no significant thermal effluents associated with operation of the RCF.

National Environmental Policy Act (NEPA) Considerations

NRC has responsibilities that are derived from NEPA and from other environmental laws, which include the Endangered Species Act (ESA), Coastal Zone Management Act (CZMA), National Historic Preservation Act (NHPA), Fish and Wildlife Coordination Act (FWCA), and Executive Order 12898 Environmental Justice. The following presents a brief discussion of impacts associated with these laws and other requirements.

I. Endangered Species Act (ESA)

The RCF site does not contain any Federally- or state-protected fauna or flora, nor do the RCF effluents impact the habitats of any such fauna or flora, with one possible exception. The Karner blue butterfly is listed as endangered in Schenectady County, New York, as well as in numerous other counties in varied states along the Great Lakes Region, by the U.S. Fish and Wildlife Service. The primary threats to this species are habitat destruction and wildfire suppression. Continued operation of the RCF does not pose any unique or serious threats to this species as the RCF site is well established, has a small footprint, and is surrounded by developed land unsuitable for supporting a large population of Karner blue butterflies.

II. Costal Zone Management Act (CZMA)

The site occupied by the RCF is not located within any managed coastal zones, nor do the RCF effluents impact any managed costal zones.

III. National Historical Preservation Act (NHPA)

The NHPA requires Federal agencies to consider the effects of their undertakings on historic properties. The National Register of Historic Places (NRHP) lists several historical sites located near the RCF. According to the NRHP, the locations of these sites are at least 0.5 km (0.3 mi) from the RCF. Given the distance to these sites and that the proposed action does not involve any demolition, rehabilitation, construction, changes in land use, or significant changes in effluents from the facility, continued operation of the RCF will not impact any historic sites. The NRC staff consulted the State Historic Preservation Officer (SHPO), and the SHPO determined that license renewal would have no adverse effect on historic properties in the vicinity of the RCF. Based on this information, the NRC staff finds that the potential impacts of license renewal would have no adverse effect on historic properties.

IV. Fish and Wildlife Coordination Act

The licensee is not planning any water resource development projects, including any of the modifications relating to impounding a body of water, damming, diverting a stream or river, deepening a channel, irrigation, or altering a body of water for navigation or drainage.

V. Executive Order 12898—Environmental Justice

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from the relicensing and the continued operation of the RCF. Such effects may include human health, biological, cultural, economic, or social impacts.

Minority Populations in the Vicinity of the RCF—According to 2000 census data, 10.2 percent of the total population (approximately 1,307,000 individuals) residing within a 50-mile radius of RCF identified themselves as minority individuals. The largest minority groups were Black or African American (approximately 73,000 persons or 5.6 percent), followed by Hispanic or Latino (33,000 or 2.5 percent). According to the U.S. Census Bureau, about 13.7 percent of the Schenectady County population identified themselves as minorities, with persons of Black or African American origin comprising the largest minority group (6.8 percent). According to the census data 3-year average estimates for 2006–2008, the minority population of Schenectady County, as a percent of the total population, had increased to 20 percent.

Low-income Populations in the Vicinity of the RCF—According to 2000 Census data, approximately 23,000 families and 123,000 individuals (approximately 6.9 and 9.4 percent, respectively) residing within a 50-mile radius of the RCF were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to Census data in the 2006–2008 American Community Survey 3-Year Estimates, the median

household income for New York was $55,401, while 10.5 percent of families and 13.8 percent of the state population were determined to be living below the Federal poverty threshold. Schenectady County had the same median household income average ($55,421) and a lower percent of families (6.7 percent) and a similar percentage of individuals (10.8 percent) living below the poverty level, respectively.

Impact Analysis—Potential impacts to minority and low-income populations would mostly consist of radiological effects, however radiation doses from continued operations associated with the license renewal are expected to continue at current levels, and would be well below regulatory limits. Minority and low-income populations are subsets of the general public residing around the RCF, and all are exposed to the same health and environmental effects generated from activities at the RCF. Based on this information and the analysis of human health and environmental impacts presented in this environmental assessment, the license renewal would not have disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of the RCF.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to license renewal, the NRC staff considered denial of the proposed action. If the Commission denied the application for license renewal, facility operations would end and decommissioning would be required. The NRC staff notes that, even with a renewed license, the RCF will eventually be decommissioned, at which time the environmental effects of decommissioning will occur. Decommissioning would be conducted in accordance with an NRC-approved decommissioning plan, which would require a separate environmental review under 10 CFR 51.21. Cessation of reactor operations would reduce or eliminate radioactive effluents and emissions. However, as previously discussed in this environmental assessment, radioactive effluents and emissions from reactor operations constitute a small fraction of the applicable regulatory limits, and are often below detectable levels. Therefore, the environmental impacts of license renewal and the denial of the request for license renewal would be similar. In addition, denying the request for license renewal would eliminate the benefits of teaching, research, and services provided by the RCF.

Alternative Use of Resources

The proposed action does not involve the use of any different resources or significant quantities of resources beyond those previously considered in the issuance of Amendment No. 5 to Facility Operating License No. CX–22, dated December, 1983, which renewed the license for a period of twenty years, or the issuance of Amendment No. 7 dated July 7, 1987, which ordered RPI to convert the reactor to use low-enriched uranium fuel.

Agencies and Persons Consulted

In accordance with the agency's stated policy, on September 4, 2008, the NRC staff consulted with the State Liaison Officer regarding the environmental impact of the proposed action. The State official had no comments regarding the proposed action. The NRC staff also consulted with the SHPO regarding the potential impact of the proposed action on historic resources. As previously mentioned, the SHPO determined that license renewal would have no adverse effect on historic properties in the vicinity of the RCF.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated November 19, 2002 (ML023380455 and ML072210835), as supplemented on July 21 (ML082060048), July 28 (ML082190523), and September 3, 2008 (ML101260200); June 28 (ML101820298), August 31 (ML102790045 and ML102720039), October 14 (ML103070074), and October 28, 2010 (ML103080207); and February 14 (ML110490531) and May 9, 2011 (ML11131A180). Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff at 1–800–397–4209, or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

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

For the Nuclear Regulatory Commission.

Jessie Quichocho,

Chief, Research and Test Reactors Licensing Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–14665 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2010–0282]

Final Safety Culture Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of final safety culture policy statement.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is issuing this Statement of Policy to set forth its expectation that individuals and organizations performing or overseeing regulated activities establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. The Commission defines Nuclear Safety Culture as *the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment.* This policy statement applies to all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority.

DATES: This policy statement becomes effective upon publication in the **Federal Register**.

ADDRESSES: You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are

available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov*.

• *Federal rulemaking Web site:* Public comments and supporting materials related to this document can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2010–0282. Address questions about NRC dockets to Carol Gallagher, telephone: 301–492–3668; e-mail: *Carol.Gallagher@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Roy P. Zimmerman, Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; *telephone:* 301–415–2741; *e-mail: Roy.Zimmerman@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Previous Policy Statements and Events Involving Safety Culture

The NRC has long recognized the importance of a safety-first focus in nuclear work environments for public health and safety. The Commission's emphasis on a safety-first focus is reflected in two previously published NRC policy statements. The 1989, ''Policy Statement on the Conduct of Nuclear Power Plant Operations'' (54 FR 3424; January 24, 1989), applies to all individuals engaged in activities that affect the safety of nuclear power plants, and provides the Commission's expectations of utility management and licensed operators with respect to the conduct of operations. The 1996, ''Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation'' (61 FR 24336; May 14, 1996), applies to the regulated activities of all NRC licensees and their contractors and subcontractors, and provides the Commission's expectations that licensees and other employers subject to NRC authority establish and maintain safety-conscious work environments in which employees feel free to raise safety concerns, both to their management and to the NRC, without fear of retaliation. This Safety Culture Statement of Policy, in conjunction with the previous policy statements, is intended to emphasize the importance the NRC places on the development and maintenance of a positive safety culture for all regulated activities.

The accident at the Chernobyl nuclear power plant in 1986, brought attention to the importance of safety culture and the impact that weaknesses in safety culture can have on safety performance. Since then, the importance of a positive safety culture has been demonstrated by a number of significant, high-visibility events worldwide. In the United States, incidents involving the civilian uses of radioactive materials have not been confined to a particular type of licensee or certificate holder, as they have occurred at nuclear power plants and fuel cycle facilities and during medical and industrial activities involving regulated materials. Assessments of these incidents revealed that weaknesses in the regulated entities' safety cultures were an underlying cause of the incidents or increased the severity of the incidents. The causes of these incidents included, for example, inadequate management oversight of process changes, perceived production pressures, lack of a questioning attitude, and poor communications. One such incident indicated the need for additional NRC efforts to evaluate whether the agency should increase its attention to reactor licensees' safety cultures. This resulted in important changes to the NRC's Reactor Oversight Process (ROP). Commission paper SECY–06–0122, dated May 24, 2006, (ADAMS Accession No. ML061320282) describes the NRC's safety culture activities at that time and the outcomes of those activities.

Following the terrorist attacks of September 11, 2001, the Commission issued orders enhancing security at facilities whose operations, if attacked, could have an impact on public health and safety. During the early years of implementation of these security enhancements, several violations of the Commission's security requirements were identified in which the licensee's failure to cultivate a positive safety culture impacted the effectiveness of the licensee's security program. The most visible of these involved security officers sleeping in a ''ready room'' while on shift at a nuclear power plant. Most of the weaknesses involved inadequate management oversight of security, lack of a questioning attitude within the security organization, complacency, barriers to raising concerns about security issues, and inadequate training of security personnel.

B. Commission Direction

In February 2008, the Commission issued Staff Requirements Memorandum (SRM), SRM–COMGBJ–08–0001 (ADAMS Accession No. ML080560476), directing the NRC staff to expand the Commission's policy on safety culture to address the unique aspects of security and to ensure the resulting policy is applicable to all licensees and certificate holders. The Commission directed the staff to answer several additional questions, including: (1) Whether safety culture as applied to reactors needed to be strengthened; (2) how to increase attention to safety culture in the materials area; (3) how stakeholder involvement can most effectively be used to address safety culture for all NRC and Agreement State licensees and certificate holders, including any unique aspects of security; and (4) whether publishing the NRC's expectations for safety culture and for security culture would be best accomplished in one safety/security culture statement or in two separate statements while still considering the safety and security interfaces.

In response to Commission direction, the NRC staff reviewed domestic and international safety-culture-related documents and considered NRC lessons learned. Additionally, the staff sought insights and feedback from external stakeholders. This was accomplished by providing information in a variety of forums, such as stakeholder organization meetings, newsletters, and teleconferences, and by publishing questions developed to address Commission direction in the February 9, 2009, **Federal Register** notice (FRN) (74 FR 6433) entitled ''Safety Culture Policy Statement Development: Public Meeting and Request for Public Comments'' (ADAMS Accession No. ML090260709).

In February 2009, the NRC held a public workshop on the ''Development of a Policy Statement on Safety Culture and Security Culture'' in which a broad range of stakeholders participated, including representatives from the Agreement States (Meeting Summary: ADAMS Accession No. ML090930572). The staff developed draft characteristics (subsequently referred to as ''traits'') of a positive safety culture and presented them at the workshop. Mindful of the increased attention to the important role of security, the staff also sought input from the workshop participants on whether there should be a single safety culture policy statement or two policy statements addressing safety and security independently while considering the interface of both. Before providing its recommendations to the Commission, the staff developed a draft definition of safety culture in which it modified a definition from the International Atomic Energy Agency's

advisory group, the International Nuclear Safety Group, to make it applicable to all NRC-regulated activities and to address security.

Based on its review and stakeholder feedback, in SECY–09–0075, ''Safety Culture Policy Statement,'' dated May 16, 2009 (ADAMS Accession No. ML091130068), the NRC staff provided a single draft safety culture policy statement for Commission approval. The draft policy statement acknowledged the importance of safety and security, and the interface of both, within an overarching culture of safety. Additionally, in response to the Commission's questions, the staff: (1) Concluded that the NRC's oversight of safety culture as applied to reactors has been strengthened, is effective, and continues to be refined in accordance with the existing ROP self-assessment process; (2) described actions taken and planned for increasing attention to safety culture in the materials area; and (3) described actions taken and planned for most effectively obtaining stakeholder involvement to address safety culture, including any unique aspects of security, for all NRC and Agreement State licensees and certificate holders.

In SRM–SECY–09–0075 (ADAMS Accession No. ML092920099), the Commission directed the staff to: (1) Publish the draft safety culture policy statement for no fewer than 90 days; (2) continue to engage a broad range of stakeholders, including the Agreement States and other organizations with an interest in nuclear safety, to ensure the final policy statement presented to the Commission reflects a broad spectrum of views and provides the necessary foundation for safety culture applicable to the entire nuclear industry; (3) make the necessary adjustments to encompass security within the statement; (4) seek opportunities to comport NRC terminology, where possible, with that of existing standards and references maintained by those that the NRC regulates; and (5) consider incorporating suppliers and vendors of safety-related components in the safety culture policy statement.

C. Development of the Final Policy Statement

On February 2–4, 2010, the NRC held a second safety culture workshop to provide a venue for interested parties to comment on the draft safety culture policy statement. The additional goal of the workshop was for panelists representing a broad range of stakeholders to reach alignment, using common terminology, on a definition of safety culture and a high-level set of traits that describe areas important to a positive safety culture. The workshop panelists represented a wide range of stakeholders regulated by the NRC and/or the Agreement States, including medical, industrial, and fuel cycle materials users, and nuclear power reactor licensees, as well as the Nuclear Energy Institute, the Institute of Nuclear Power Operations (INPO), and members of the public. The workshop panelists reached alignment with input from the other meeting attendees on a definition of safety culture and a high-level set of traits describing areas important to a positive safety culture.

Following the February 2010, workshop, the NRC staff evaluated the public comments that were submitted in response to the November 6, 2009, FRN (74 FR 57525). Additionally, the staff participated on panels and made presentations at various industry forums in order to provide information to stakeholders about the development of the safety culture policy statement and/or to obtain additional input and to ascertain whether the definition and traits developed at the workshop accurately reflect a broad range of stakeholders' views. These outreach activities included, for example, participation in a Special Joint Session on Safety Culture at the Health Physics Society Annual Meeting, and presentations on the development of the safety culture policy statement at the Annual Fuel Cycle Information Exchange, the Conference of Radiation Control Program Directors' Annual National Conference on Radiation Control, the Institute of Nuclear Materials Management's Annual Meeting, the Second NRC Workshop on Vendor Oversight for New Reactors, and the Organization of Agreement States Annual Meeting. In response to Commission direction in SRM–SECY–09–00075, the staff focused attention on attending meetings involving the Organization of Agreement States and other materials licensees.

In July 2010, the NRC held a public teleconference with the panelists who participated in the February 2010, workshop to discuss the status of outreach activities associated with the development of the policy statement. At the July 2010, meeting, the panelists reiterated their support for the definition and traits developed at the February 2010, workshop as a result of their outreach with their industry colleagues. This position aligns with the comments the staff received during the various outreach activities. In September 2010, the staff held an additional teleconference to provide information on the initial results of a validation study conducted by INPO, which was conducted, in part, to see whether and to what extent the factors that came out of INPO's safety culture survey support the February 2010, workshop traits. The factors support the traits developed at the workshop.

Based on its review and stakeholder feedback, the staff published the revised draft safety culture policy statement (ADAMS Accession No. ML102500563) on September 17, 2010 (75 FR 57081), for a 30-day public comment period. Because public comments reflected some misunderstanding regarding the Commission's use of a policy statement rather than a regulation or rule, the September 2010, FRN provided clarification, pointing out that the Commission may use a policy statement to address matters relating to activities that are within NRC jurisdiction and are of particular interest and importance to the Commission. Policy statements help to guide the activities of the NRC staff and can express the Commission's expectations of others; however, they are not regulations or rules and are not accorded the status of a regulation or rule within the meaning of the Administrative Procedure Act. The Agreement States, which are responsible for overseeing their materials licensees, cannot be required to implement the elements of a policy statement because such statements, unlike NRC regulations, are not a matter of compatibility. Additionally, policy statements cannot be considered binding upon, or enforceable against, NRC or Agreement State licensees and certificate holders.

This Statement of Policy has been developed to engage individuals and organizations performing regulated activities involving nuclear materials and share the Commission's expectations regarding the development and maintenance of a positive safety culture.

The NRC held a public meeting in September 2010, in the Las Vegas Hearing Facility, Las Vegas, Nevada, which was simultaneously broadcast in the Commission Hearing Room, Rockville, Maryland, and over the internet via Web streaming in order to allow remote participation. The goals of the September 2010, FRN and meeting were to provide additional opportunities for stakeholders to comment on the revised draft policy statement, including the definition and traits developed at the February 2010, workshop, and to discuss the information gathered from the outreach activities that had occurred since the February 2010, workshop. Additionally, a representative from INPO presented

information on the validation study INPO conducted as part of INPO's efforts to help establish a technical basis for the identification and definition of areas important to safety culture. A member of the Office of Nuclear Regulatory Research also presented findings related to the oversight of the INPO study.

II. Public Comments

The November 2009, FRN and the September 2010, FRN generated 76 comments from affected stakeholders and members of the public. The staff's evaluation concluded that many of the comments were statements of agreement on the information included in the draft and revised safety culture policy statements and did not require further action. A few of the commenters raised issues that the staff considered during the development of the policy statement, but ultimately concluded that the issues were either not applicable to the policy statement, for example, that ''by virtue of its all encompassing applicability, the policy must be taken as a strategic utterance;'' or either misunderstood or disregarded the concept of a policy statement in this application, for example, that a policy statement is ''largely inadequate for purposes of establishing broad-reaching performance standards.'' The remaining comments informed the NRC staff's development of the final policy statement. These were grouped into the following themes:

1. The NRC should adopt the definition and traits developed during the February 2010, workshop. This theme encompassed additional comments indicating that retaining the term ''security'' in the definition and traits of a positive safety culture may be confusing to many licensees, particularly materials licensees.

2. The traits from the February 2010, workshop should be included in the Statement of Policy in order to provide additional clarity as to its intent.

3. More guidance is needed on the NRC's expectations as to how the policy statement will be implemented. This encompassed the additional theme that stakeholders would like to be actively involved in the process of developing this guidance and that the continued use of workshops with the various licensees would be helpful.

4. A discussion should be included in the policy statement that addresses the diversity of the regulated community. Additionally, the Commission should acknowledge the efforts already underway as the regulated community addresses the Statement of Policy.

5. How does the NRC plan to ''enforce'' adherence to the policy statement?

6. Comments on the draft policy statement were generally supportive of including vendors and suppliers of safety-related components in the Statement of Policy, but reflected concern about jurisdictional issues, as well as the impact that including vendors and suppliers in the Statement of Policy might have on licensees' ability to work with these entities.

7. During its evaluation of the public comments on the draft safety culture policy statement, the staff felt that a trait addressing complacency should be added to the February 2010, workshop traits. Several months later, the results of an INPO study indicated that the trait ''Questioning Attitude'' had strong support with operating nuclear plant personnel. This trait resonated with the staff as an approach for addressing complacency for all regulated activities. At the September 2010, public meeting, as part of a larger presentation providing the results of the INPO validation study, the staff added a question about whether to include this trait. Additionally, the September 2010, FRN specifically asked whether complacency should be addressed in the Statement of Policy. Although the responses to this question varied, the staff concluded it should be considered in a positive safety culture and included the concept of complacency in the Statement of Policy under the trait, ''Questioning Attitude.'' ''Questioning Attitude'' is described in the final Statement of Policy as a culture ''in which individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.''

This policy statement is being issued after careful consideration of the staff's evaluation of the public comments received on the November 2009, and September 2010, FRNs; the public meetings held in February 2009, and February, July, and September 2010; the views expressed by stakeholders during the Commission briefing in March 2010; and the informal dialogue with the various stakeholders during the staff's additional outreach efforts from the February 2010, workshop until the second public comment period ended on October 18, 2010.

The following paragraphs provide the specific information that was used in the development of the final policy statement, including the changes that were made to the November 2009, FRN:

1. The Statement of Policy adopts the February 2010, workshop definition and traits of a positive safety culture. The term ''security'' is not included in either the definition or the traits. The Commission agrees that an overarching safety culture addresses both safety and security and does not need to single out ''security'' in the definition. However, to ensure that security is appropriately encompassed within the Statement of Policy, a preamble to the traits has been added and the robust discussion of security, including the importance of considering the interface of safety and security that was included in the draft Statement of Policy, has been retained in the Statement of Policy.

2. The Commission agrees that including the traits in the Statement of Policy will serve to clarify the intent of the policy. The draft policy statement published in the November 2009, FRN did not include the characteristics (now described as ''traits') in the actual Statement of Policy. The staff developed the draft characteristics based on a variety of sources, including the 13 safety culture components used in the ROP. The characteristics included significantly more detail than the traits included in the Statement of Policy. The staff's basis for the original decision to include the characteristics in another section of the draft policy statement but not in the actual draft Statement of Policy was three-fold: first, it would keep the Statement of Policy brief and concise; second, it would maintain the Statement of Policy at a high level; and third, it would not invalidate the characteristics' standing as part of the draft policy statement to place them in another section of the draft policy statement. The November 6, 2009, FRN that contained the draft policy statement specifically requested comments on whether the characteristics should be included in the Statement of Policy. Some commenters indicated that they would prefer not to include the traits in the actual Statement of Policy or that they agree with the original decision to include the traits in their own section of the policy statement. However, several commenters indicated that adding the traits to the Statement of Policy itself would help to clarify the Commission's expectations. Because the traits in question were developed by the stakeholders at the February 2010, workshop to provide a high-level description of the areas important to a positive safety culture, the level of detail that was included in the draft characteristics is not present in the traits. Thus, even with inclusion of the traits, the Statement of Policy remains brief and concise; in addition, this approach provides high-level detail that

was not in the draft Statement of Policy. Including the traits in the Statement of Policy rather than as part of the policy statement visually supports their standing as part of the Commission's expectation that these are areas that members of the regulated community should consider as they develop a positive safety culture. Finally, as the Statement of Policy points out, the list of traits was not developed for inspection purposes nor does it represent an all-inclusive list of areas important to a positive safety culture.

3. Implementation is not directly addressed in this policy statement, which sets forth the overarching principles of a positive safety culture. This discussion is not included because the Commission is aware of the diversity of its regulated community (which includes, for example, industrial radiography services; hospitals, clinics and individual practitioners involved in medical uses of radioactive materials; research and test reactors; large-scale fuel fabrication facilities; as well as operating nuclear power plants and the construction of new facilities where operations will involve radioactive materials with the potential to affect public health and safety and the common defense and security) and recognizes that implementation will be more complex in some settings than others. The NRC program offices responsible for licensing and oversight of the affected entities intend to work with their constituents, who bear the primary responsibility for safely handling and securing regulated materials, to address the next steps and specific implementation issues. Nevertheless, before implementation issues are addressed, the regulated community can begin assessing their activities to identify areas for enhancement. For example, industry representatives could begin to identify tacit organizational and personal goals that, at times, may compete with a safety-first focus and develop strategies for adjusting those goals. Some monetary incentive or other rewards programs could work against making a safe decision. Current training programs may not address safety culture and its traits or how those traits apply to day-to-day work activities. Identification of both strengths and weaknesses related to safety culture in the regulated community will be helpful in understanding implementation strategies.

4. The final Statement of Policy includes a statement that the Commission recognizes the diversity of the various organizations that are included in the Statement of Policy and the fact that some organizations have already spent significant time and resources in the development of programs and policies to support a positive safety culture. The Commission will take these efforts into consideration as the regulated community addresses the Statement of Policy.

5. Because there seemed to be some questions about the Commission's use of a policy statement rather than a regulation, the staff provided a brief discussion of the differences in the September 17, 2010, FRN, pointing out that policy statements, while not enforceable, guide the activities of the NRC staff and express the Commission's expectations. The Commission reiterates the conclusion of the discussion provided in the September 2010, FRN that while the option to consider rulemaking exists, the Commission believes at this time, that developing a policy statement is a more effective way to engage stakeholders.

6. Vendors and suppliers of safety-related components have been included in this Statement of Policy. A few stakeholders have raised concerns about how implementation would be carried out, particularly in cases where vendors and suppliers are located outside of NRC jurisdiction. However, the Commission believes that vendors and suppliers of safety-related components should develop and maintain a positive safety culture in their organizations for the same reasons that other NRC-regulated entities should do so.

7. The final Statement of Policy adds the trait ''Questioning Attitude'' to the traits developed at the February 2010, workshop as an appropriate vehicle for addressing complacency.

III. Statement of Policy

The purpose of this Statement of Policy is to set forth the Commission's expectation that individuals and organizations establish and maintain a positive safety culture commensurate with the safety and security significance of their activities and the nature and complexity of their organizations and functions. This includes all licensees, certificate holders, permit holders, authorization holders, holders of quality assurance program approvals, vendors and suppliers of safety-related components, and applicants for a license, certificate, permit, authorization, or quality assurance program approval, subject to NRC authority. The Commission encourages the Agreement States, Agreement State licensees and other organizations interested in nuclear safety to support the development and maintenance of a positive safety culture, as articulated in this Statement of Policy.

Nuclear Safety Culture is defined as *the core values and behaviors resulting from a collective commitment by leaders and individuals to emphasize safety over competing goals to ensure protection of people and the environment.* Individuals and organizations performing regulated activities bear the primary responsibility for safety and security. The performance of individuals and organizations can be monitored and trended and, therefore, may be used to determine compliance with requirements and commitments and may serve as an indicator of possible problem areas in an organization's safety culture. The NRC will not monitor or trend values. These will be the organization's responsibility as part of its safety culture program.

Organizations should ensure that personnel in the safety and security sectors have an appreciation for the importance of each, emphasizing the need for integration and balance to achieve both safety and security in their activities. Safety and security activities are closely intertwined. While many safety and security activities complement each other, there may be instances in which safety and security interests create competing goals. It is important that consideration of these activities be integrated so as not to diminish or adversely affect either; thus, mechanisms should be established to identify and resolve these differences. A safety culture that accomplishes this would include all nuclear safety and security issues associated with NRC-regulated activities.

Experience has shown that certain personal and organizational traits are present in a positive safety culture. A trait, in this case, is a pattern of thinking, feeling, and behaving that emphasizes safety, particularly in goal conflict situations, e.g., production, schedule, and the cost of the effort versus safety. It should be noted that although the term ''security'' is not expressly included in the following traits, safety and security are the primary pillars of the NRC's regulatory mission. Consequently, consideration of both safety and security issues, commensurate with their significance, is an underlying principle of this Statement of Policy.

The following are traits of a positive safety culture:

(1) *Leadership Safety Values and Actions*—Leaders demonstrate a commitment to safety in their decisions and behaviors;

(2) *Problem Identification and Resolution*—Issues potentially

impacting safety are promptly identified, fully evaluated, and promptly addressed and corrected commensurate with their significance;

(3) *Personal Accountability*—All individuals take personal responsibility for safety;

(4) *Work Processes*—The process of planning and controlling work activities is implemented so that safety is maintained;

(5) *Continuous Learning*—Opportunities to learn about ways to ensure safety are sought out and implemented;

(6) *Environment for Raising Concerns*—A safety conscious work environment is maintained where personnel feel free to raise safety concerns without fear of retaliation, intimidation, harassment, or discrimination;

(7) *Effective Safety Communication*—Communications maintain a focus on safety;

(8) *Respectful Work Environment*—Trust and respect permeate the organization; and

(9) *Questioning Attitude*—Individuals avoid complacency and continuously challenge existing conditions and activities in order to identify discrepancies that might result in error or inappropriate action.

There may be traits not included in this Statement of Policy that are also important in a positive safety culture. It should be noted that these traits were not developed to be used for inspection purposes.

It is the Commission's expectation that all individuals and organizations, performing or overseeing regulated activities involving nuclear materials, should take the necessary steps to promote a positive safety culture by fostering these traits as they apply to their organizational environments. The Commission recognizes the diversity of these organizations and acknowledges that some organizations have already spent significant time and resources in the development of a positive safety culture. The Commission will take this into consideration as the regulated community addresses the Statement of Policy.

Dated at Rockville, Maryland, this 8th day of June 2011.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2011–14656 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS) Meeting of the ACRS Subcommittee on Fukushima; Notice of Meeting

The ACRS Subcommittee on Fukushima will hold a meeting on June 23, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 23, 2011—1 p.m. until 5 p.m.

The Subcommittee will review recent events at the Fukushima site in Japan. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Mr. Edwin M. Hackett (Telephone 301–415–7360 or *E-mail: Edwin.Hackett@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: June 6, 2011.

Yoira Diaz-Sanabria,

Acting Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–14655 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels; Notice of Meeting

The ACRS Subcommittee on Materials, Metallurgy & Reactor Fuels will hold a meeting on June 23, 2011, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 23, 2011–8:30 a.m. until 12 p.m.

The Subcommittee will review the expanded technical basis for 50.46(c) and the research results of the mechanical behavior of ballooned and ruptured cladding. A draft document entitled, ''Mechanical Behavior of Ballooned and Ruptured Cladding,'' has been made publicly available to provide awareness to the public regarding the staff's position, so they can effectively participate in the ACRS meeting. The NRC is not soliciting comments at this time. This draft document may be incomplete or in error in one or more respects and may be subject to further revision during the review process. The Adams accession number is ML111370032. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Christopher

Brown (Telephone 301–415–7111 or e-mail: *Christopher.Brown@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be emailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs.* Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the Web site cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: June 7, 2011

Cayetano Santos,

Chief, Reactor Safety Branch A, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–14657 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee On Reactor Safeguards (ACRS), Meeting of the ACRS Subcommittee on Radiation Protection and Nuclear Materials; Notice of Meeting

The ACRS Subcommittee on Radiation Protection and Nuclear Materials will hold a meeting on June 23, 2011, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 23, 2011—8:30 a.m. until 12 p.m.

The Subcommittee will review the Low-Level Waste Disposal Site-Specific Performance Analysis Rulemaking language and technical basis. The Subcommittee will hear presentations by and hold discussions with the NRC staff and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the Full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official (DFO), Derek Widmayer (Telephone 301–415–7366 or E-mail: *Derek.Widmayer@nrc.gov*) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Thirty-five hard copies of each presentation or handout should be provided to the DFO thirty minutes before the meeting. In addition, one electronic copy of each presentation should be e-mailed to the DFO one day before the meeting. If an electronic copy cannot be provided within this timeframe, presenters should provide the DFO with a CD containing each presentation at least thirty minutes before the meeting. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Detailed procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 21, 2010, (75 FR 65038–65039).

Detailed meeting agendas and meeting transcripts are available on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/acrs*. Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained from the website cited above or by contacting the identified DFO. Moreover, in view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with these references if such rescheduling would result in a major inconvenience.

If attending this meeting, please contact Ms. Jessie Delgado (Telephone 301–415–7360) to be escorted to the meeting room.

Dated: June 6, 2011.

Yoira Diaz-Sanabria, Acting Chief,

Reactor Safety Branch B, Advisory Committee on Reactor Safeguards.

[FR Doc. 2011–14658 Filed 6–13–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of June 13, 20, 27, July 4, 11, 18, 2011.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 13, 2011

Wednesday, June 15, 2011

9:30 a.m.

Briefing on the Progress of the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (Contact: Nathan Sanfilippo, 301–415–3951)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of June 20, 2011—Tentative

There are no meetings scheduled for the week of June 20, 2011.

Week of June 27, 2011—Tentative

There are no meetings scheduled for the week of June 27, 2011.

Week of July 4, 2011—Tentative

There are no meetings scheduled for the week of July 4, 2011.

Week of July 11, 2011—Tentative

Tuesday, July 12, 2011

9:30 a.m.

Briefing on the NRC Actions for Addressing the Integrated Regulatory Review Service (IRRS) Report (Public Meeting) (Contact: Jon Hopkins, 301–415–3027)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

Week of July 18, 2011—Tentative

Tuesday, July 19, 2011

9:30 a.m.

Briefing on the Task Force Review of NRC Processes and Regulations Following Events in Japan (Public Meeting) (Contact: Nathan Sanfilippo, 301–415–3951)

* * * * *

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

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*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at 301–415–6200, TDD: 301–415–2100, or by e-mail at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov*.

Dated: June 9, 2011.

Richard J. Laufer,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2011–14800 Filed 6–10–11; 11:15 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting Cancellation Notice; June 16, 2011 Public Hearing

OPIC's Sunshine Act notice of its Public Hearing in Conjunction with each Board meeting was published in the **Federal Register** (Volume 76, Number 104, Pages 31382 and 31383) on May 31, 2011. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing scheduled for 2 p.m., June 16, 2011 in conjunction with OPIC's June 23, 2011 Board of Directors meeting has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, or via e-mail at *Connie.Downs@opic.gov.*

Dated: June 10, 2011.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 2011–14808 Filed 6–10–11; 4:15 pm]

BILLING CODE 3210–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 17a–10; SEC File No. 270–154; OMB Control No. 3235–0122.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–10, Report on revenue and expenses (17 CFR 240.17a–10), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Paragraph (a)(1) of Rule 17a–10 generally requires broker-dealers that are exempted from the requirement to file monthly and quarterly reports pursuant to paragraph (a) of Exchange Act Rule 17a–5 (17 CFR 240.17a–5) to file with the Commission the Facing Page, a Statement of Income (Loss), and balance sheet from Part IIA of Form X–17A–5 [1] (17 CFR 249.617), and Schedule I of Form X–17A–5 not later than 17 business days after the end of each calendar year.

Paragraph (a)(2) of Rule 17a–10 requires a broker-dealer subject to Rule 17a–5(a) to submit Schedule I of Form X–17A–5 with its Form X–17A–5 for the calendar quarter ending December 31 of each year. The burden associated with filing Schedule I of Form X–17A–5 is accounted for in the PRA filing associated with Rule 17a–5.

[1] Form X–17A–5 is the Financial and Operational Combined Uniform Single Report (''FOCUS Report''), which is used by broker-dealers to provide certain required information to the Commission.

Paragraph (b) of Rule 17a–10 provides that the provisions of paragraph (a) do not apply to members of national securities exchanges or registered national securities associations that maintain records containing the information required by Form X–17A–5 and which transmit to the Commission copies of the records pursuant to a plan which has been declared effective by the Commission.

The primary purpose of Rule 17a–10 is to obtain the economic and statistical data necessary for an ongoing analysis of the securities industry. As originally adopted in 1968, Rule 17a–10 required broker-dealers to provide their revenue and expense data on a special form. The Rule was amended in 1977 to eliminate the form. The data previously reported on the form is now reported using Form X–17A–5 and its supplementary schedules.

The Commission estimates that approximately 168 broker-dealers will spend an average of approximately 12 hours per year complying with Rule 17a–10. Thus, the total compliance burden is estimated to be approximately 2,016 hours per year.

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 on respondents; 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 OMB 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 OMB control number.

Please direct your written comments to Thomas Bayer, Director/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*.

June 8, 2011.

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14669 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission (''SEC'') and the Commodity Futures Trading Commission (''CFTC'') will hold public roundtable discussions on Thursday, June 16, 2011 at the CFTC's headquarters at Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

The meeting will begin at 9 a.m. and will be open to the public, with seating on a first-come, first-served basis. Visitors will be subject to security checks. This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

The agenda for the meeting includes panel discussions concerning the definitions of ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' and ''major security-based swap participant'' in the context of certain authority that Section 712(d)(1) of the Dodd-Frank Wall Street Reform and Consumer Protection Act granted the Agencies.

For further information, please contact the CFTC's Office of Public Affairs at (202) 418–5080 or the SEC's Office of Public Affairs at (202) 551–4120.

Dated: June 9, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–14783 Filed 6–10–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64633; File No. SR–NASDAQ–2011–073]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing of Proposed Rule Change To Adopt Additional Listing Requirements for Reverse Mergers

June 8, 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 May 26, 2011, The NASDAQ Stock Market LLC (''Nasdaq'') 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 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 adopt additional listing requirements for a company that has become public through a combination with a public shell, whether through a reverse merger, exchange offer, or otherwise (a ''Reverse Merger'').[3] Nasdaq will implement the proposed rule for applications received after approval.

The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].[4]

5005. Definitions

(a) The following is a list of definitions used throughout the Nasdaq Listing Rules. This section also lists various terms together with references to other rules where they are specifically defined. Unless otherwise specified by the Rules, these terms shall have the meanings set forth below. Defined terms are capitalized throughout the Listing Rules.

(1)—(34) No change.

(35) *''Reverse Merger'' means any transaction whereby an operating company becomes public by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of IM–5101–2 or a business combination described in Rule 5110(a). In determining whether a Company is a shell, Nasdaq will look to a number of factors, including but not limited to: whether the Company is considered a ''shell company'' as defined in Rule 12b–2 under the Act; what percentage of the Company's assets are active versus passive; whether the Company generates revenues, and if so, whether the revenues are passively or actively generated; whether the Company's expenses are reasonably related to the revenues being generated; how many employees support the Company's revenue-generating business operations; how long the Company has been without material business operations; and whether the Company has publicly announced a plan to begin operating activities or generate revenues, including through a near-term acquisition or transaction.*

(36) ''Round Lot'' or ''Normal Unit of Trading'' means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol.

[(36)] *(37)* ''Round Lot Holder'' means a holder of a Normal Unit of Trading. The number of beneficial holders will be considered in addition to holders of record.

[(37)] *(38)* ''Shareholder'' means a record or beneficial owner of a security listed or applying to list. For purposes of the Rule 5000 Series, the term ''Shareholder'' includes, for example, a limited partner, the owner of a depository receipt, or unit.

[(38)] *(39)* ''Substantial Shareholder'' is defined in Rule 5635(e)(3).

[(39)] *(40)* ''Substitution Listing Event'' means: a reverse stock split, re-incorporation or a change in the Company's place of organization, the formation of a holding company that replaces a listed Company, reclassification or exchange of a Company's listed shares for another security, the listing of a new class of securities in substitution for a previously-listed class of securities, or any technical change whereby the Shareholders of the original Company receive a share-for-share interest in the new Company without any change in their equity position or rights.

[(40)] *(41)* ''Total Holders'' means holders of a security that includes both beneficial holders and holders of record.

5110. Change of Control, Bankruptcy and Liquidation, and Reverse Mergers

(a)–(b) No change

(c) Reverse Mergers

A Company that is formed by a Reverse Merger shall be eligible to submit an application for initial listing only if the combined entity has, immediately preceding the filing of the initial listing application: (i) traded for at least six months in the U.S. over-the-counter market, on another national securities exchange, or on a foreign exchange, following the filing with the Commission or Other Regulatory Authority of all required information about the transaction, including audited financial statements for the combined entity; and (ii) maintained a Bid Price of $4 per share or higher on at least 30 of the most recent 60 trading days.

In addition, such a Company may only be approved for listing if, at the time of approval, it has timely filed: (i) in the case of a domestic issuer, its most recent two required periodic financial reports with the Commission or Other Regulatory Authority (Forms 10–Q or 10–K) containing at least six months of information about the combined entity; or (ii) in the case of a Foreign Private

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This proposed rule change replaces a previous filing by Nasdaq in order to eliminate the previously proposed exception for a Reverse Merger that was also conducting a firm commitment, underwritten public offering and to clarify other portions of the original proposal. *See* Securities Exchange Act Release No. 64371 (April 29, 2011), 76 FR 25730 (May 5, 2011) (SR–NASDAQ–2011–056). The Commission notes that SR–NASDAQ–2011–056 was withdrawn on May 26, 2011.

[4] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomx.cchwallstreet.com.*

Issuer, comparable information as described in (i) above on Forms 6–K, 20–F or 40–F. In the case of a Foreign Private Issuer, a Form 6–K would be considered timely if, consistent with Rule 5250(c)(2), it includes an interim balance sheet and income statement, which must be presented in English, and is filed no later than six months following the end of the applicable quarter.

* * * * *

5210. Prerequisites for Applying to List on The Nasdaq Stock Market

(a)–(h) No change

(i) Reverse Mergers

A security issued by a Company formed through a Reverse Merger shall be eligible for initial listing only if the conditions set forth in Rule 5110(c) are satisfied.

* * * * *

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In recent months there has been an extraordinary level of public attention to listed companies that went public via a Reverse Merger, where an unlisted operating company becomes a public company by merging with a public shell.[5] The financial press, short sellers and others have raised allegations of widespread fraudulent behavior by these companies, leading to concerns that their financial statements cannot be relied upon. Concerns have also been raised that certain individuals who aggressively promote these transactions have significant regulatory histories or have engaged in transactions that are disproportionately beneficial to them at the expense of public shareholders. The Public Company Accounting Oversight Board (''PCAOB'') has also identified issues with the audits of these companies and, in response, has issued Staff Audit Practice Alert No. 6/July 12, 2010 and Staff Research Note #2011–P1/March 2011, cautioning registered accounting firms to follow certain specified auditing practices. The SEC recently took an enforcement action based on a firm's audit of a Reverse Merger company.[6] In addition, Nasdaq is aware of situations where it appeared that promoters and others intended to manipulate prices higher to satisfy Nasdaq's initial listing bid price requirement and where companies have, for example, gifted stock to artificially satisfy the 300 round lot public holder requirement. Nasdaq does not list companies in instances such as these, where it appears the company has achieved compliance with a requirement in an inappropriate manner.

In response to these concerns, Nasdaq staff has, over the past year, adopted heightened review procedures for Reverse Merger applicants. However, Nasdaq also believes that additional requirements for listing Reverse Merger companies are appropriate to discourage inappropriate behavior on the part of companies, promoters and others. Accordingly, Nasdaq proposes to adopt certain ''seasoning'' requirements for Reverse Mergers.[7]

Specifically, Nasdaq proposes to prohibit a company going public by combining with a public shell[8] from applying to list until six months after the combined entity submits all required information about the transaction, including audited financial statements, to the SEC.[9] Further, Nasdaq proposes to require that the company maintain a $4 bid price on at least 30 of the 60 trading days immediately prior to submitting the application. Finally, under the proposed rule, Nasdaq would not approve any Reverse Merger for listing unless the company has timely filed its two most recent financial reports with the SEC if it is a domestic issuer (this could be two quarterly filings or a quarterly and an annual filing) or comparable information if it is a foreign private issuer.[10] While most companies will satisfy this requirement due to the six month delay before they can apply, Nasdaq believes that it is important to assure that this requirement be satisfied in all cases.

Nasdaq believes that this proposal will result in significant investor protection benefits. Specifically, a six month seasoning requirement will allow the Financial Industry Regulatory Authority, Inc. (''FINRA'') and other regulators more time to view trading patterns and uncover potentially manipulative trading.[11] It will also result in a more bona fide shareholder base and assure that the $4 bid price was not satisfied through a quick manipulative scheme. Requiring additional SEC filings will tend to improve the reliability of the reported

[5] *See, e.g.,* Beware This Chinese Export, Barron's (August 28, 2010), available at *http://online.barrons.com/article/SB500014240529702043044045754498129431839 40.html. See also* Speech by SEC Commissioner by Commissioner Luis A. Aguilar: Facilitating Real Capital Formation (April 4, 2011), available at *http://www.sec.gov/news/speech/2011/spch040411laa.htm.*

[6] *In re* Moore Stephens Wurth Frazer and Torbet, Order Instituting Public Administrative and Cease-and-Desist Proceedings, Securities Act Release No. 9166 (December 20, 2010).

[7] Even if a company meets these proposed new requirements, Nasdaq could still deny listing based on the authority described in Rule 5101 to apply additional or more stringent criteria in order to maintain the quality of and public confidence in the market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.

[8] For purposes of this rule, Nasdaq will treat as a combination any transaction whereby an operating company becomes public by combining with a public shell, whether through a reverse merger, exchange offer, or otherwise. However, a Reverse Merger does not include the acquisition of an operating company by a listed company satisfying the requirements of IM–5101–2 (relating to companies whose business plan is to complete one or more acquisitions) or a business combination described in Rule 5110(a) (relating to a listed company that combines with a non-Nasdaq entity, resulting in a change of control of the Company and potentially allowing the non-Nasdaq entity to obtain a Nasdaq Listing, sometimes called a ''back-door listing''). In these cases, FINRA is already reviewing the trading of the listed security and Nasdaq is already reviewing the company and the individuals associated with it. Additionally, Nasdaq rules require that the company re-apply for initial listing and during that process Nasdaq would review any newly associated individuals as well as the financial information of the combined company. A Reverse Merger would also not include a Substitution Listing Event, as defined in Rule 5005(a)(39) (proposed to be renumbered as Rule 5005(a)(40), such as the formation of a holding company to replace the listed company or a merger to facilitate a re-incorporation, because in these cases the operating company is already a listed entity.

[9] A company must file a Form 8–K within four days of completing a reverse merger. The Form 8–K must contain audited financial statements and information comparable to the information provided in a Form 10 for the registration of securities. *See* Form 8–K Items 2.01, 5.06, and 9.01(c). This six month period would not begin to run until the complete Form 8–K, meeting the Commission's requirements, is filed.

[10] Nasdaq's experience has been that Reverse Merger's typically involve domestic shells. However, in the event that the Reverse Merger involves a shell that is a foreign private issuer, the combined entity would have to timely file financial reports for the most recent annual period, or a more recent six-month period. These reports would have to reflect at least six months of information about the post-merger entity and could be an interim report on Form 6–K or an annual report on Forms 20–F or 40–F. A Form 6–K would be considered timely if, consistent with Rule 5250(c)(2), it includes an interim balance sheet and income statement, which must be presented in English, no later than six months following the end of the applicable quarter.

[11] FINRA reviews trading of companies trading in the over-the-counter market in the United States. Foreign regulators and other exchanges would similarly have more time to review trading for other companies.

financial results, since the auditors will have reviewed several quarters, at least, of the public company's operating results, as will the company's audit committee. To the extent the company had adopted new internal controls at the time of the merger, those too will have been in place and able to exert a corrective influence over any previous flaws in the company's financial reporting process.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general and with Section 6(b)(5) of the Act,[13] in particular in that 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to enhance investor protection by imposing additional requirements on a category of companies that have raised regulatory concerns.

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

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–2011–073 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–2011–073. 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 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 Nasdaq. 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–2011–073, and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14648 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64630; File No. SR–NASDAQ–2011–074]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 Regarding Certain Co-Location Installation Fees

June 8, 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 May 26, 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 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 7034 regarding fees assessed for the installation of certain co-location services. The Exchange will implement the proposed change on June 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at the Exchange'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 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7034 regarding fees assessed for the installation of certain co-location services to further incentivize the use of the co-location services. The installation fees for the following co-location services will be waived commencing June 1, 2011 and ending June 30, 2011(the ''designated period''). Beginning July 1, 2011, the above-referenced waived fees will resume in full at the amount prior to [sic] designated period. The Exchange proposes to waive the following installation fees during the designated period:

1. Rule 7034(a): Installation fees for new cabinets with power.
2. Rule 7034(b): Installation fees for external telecommunication, inter-cabinet connectivity, connectivity to NASDAQ and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee [3] will not be waived during the designated period.
3. Rule 7034(c): Installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): Installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the designated period. Installation fees for other items that are customized or options are not waived during the time period.

The following requirements must be met to receive the waiver of the installation fee:

1. the new cabinet order must be placed in the CoLo Console [4] during the designated period; and
2. the new cabinet must be live within 90 days of the date of the order [5].

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 Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed installation fees in [sic] which the Exchange seeks a temporary waiver will be assessed equally to customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services. The proposal is similar to the waiver of fees during an introductory period for a product, and is equitable because all persons may avail themselves of the waiver during the period of its availability.

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. The Exchange believes that the waiver of fees for certain co-location services is equitable because all persons may avail themselves of the waiver during the period of its availability.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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 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–2011–074 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–2011–074. 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 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–NASDAQ–2011–074, and should be submitted on or before July 5, 2011.

[3] The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

[4] The ''CoLo Console'' is Web-based ordering tool that is utilized by NASDAQ to place co-location orders.

[5] Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the ''live date''). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14591 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64631; File No. SR–BX–2011–032]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 7034 Regarding Certain Co-Location Installation Fees

June 8, 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 May 26, 2011, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to modify fees for non co-location services. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2011. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at the Exchange'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 Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 7034 regarding fees assessed for the installation of certain co-location services to further incentivize the use of the co-location services. The installation fees for the following co-location services will be waived commencing June 1, 2011 and ending June 30, 2011 (the ''designated period''). Beginning July 1, 2011, the above-referenced waived fees will resume in full at the amount prior to [sic] designated period. The Exchange proposes to waive the following installation fees during the designated period:

1. Rule 7034(a): installation fees for new cabinets with power.
2. Rule 7034(b): installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee[3] will not be waived during the designated period.
3. Rule 7034(c): installation fees for cabinet power related to an order for a new cabinet.
4. Rule 7034(d): installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the designated period. Installation fees for other items that are customized or options are not waived during the time period.

The following requirements must be met to receive the waiver of the installation fee:

1. The new cabinet order must be placed in the CoLo Console[4] during the designated period; and
2. The new cabinet must be live within 90 days of the date of the order.[5]

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 Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed installation fees in [sic] which the Exchange seeks a temporary waiver will be assessed equally to customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services. The proposal is similar to the waiver of fees during an introductory period for a product, and is equitable because all persons may avail themselves of the waiver during the period of its availability.

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. The Exchange believes that the waiver of fees for certain co-location services is equitable because all persons may avail themselves of the waiver during the period of its availability.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

[4] The ''CoLo Console'' is a Web-based ordering tool that is utilized by BX to place co-location orders.

[5] Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the ''live date''). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(a)(ii) [sic].

whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–2011–032 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–2011–032. 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 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2011–032, and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14598 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64635; File No. SR–NASDAQ–2011–072]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

June 8, 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 May 25, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement the proposed change on June 1, 2011. The text of the proposed rule change is available at *http://nasdaq.cchwallstreet.com/,* at NASDAQ'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, 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.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ is amending Rule 7018 to make modifications to its pricing schedule for execution of quotes/orders through the NASDAQ Market Center of securities priced at $1 or more. Specifically, NASDAQ is proposing to introduce, on a three-month pilot basis, an Attributable Market Provider program to encourage more extensive market making activity on NASDAQ. During a pilot period ending August 31, 2011, a market maker with an MPID through which it has registered as a market maker in a daily average of more than 5,000 securities during the month will receive an additional credit of $0.0004 per share executed with respect to attributable quotes/orders that provide liquidity through such MPID, in addition to the credit that it is otherwise entitled to receive under Rule 7018. The maximum additional rebate that a member can receive under this pilot program is $250,000 per month. The cap applies on a per member basis, regardless of the number of MPIDs through which the member qualifies for the program. Through the program, NASDAQ hopes to encourage market makers to register in a greater number of securities and to offer displayed, attributable liquidity in order to enhance price discovery. Throughout the pilot period, NASDAQ will evaluate the costs and benefits of the program, and will then either allow the pilot to lapse or file to extend, modify, or make the program permanent.

NASDAQ is also amending other provisions of Rule 7018 to reflect a recent filing by NASDAQ OMX BX, Inc. (''BX'')[3] in which BX introduced pricing tiers for the credit it pays to persons accessing liquidity on BX. Currently, NASDAQ passes through the $0.0014 per share credit it receives from BX when it routes TFTY, SOLV, CART, or SAVE orders to BX that execute at that venue. Although NASDAQ expects that the volume of orders its members route to BX using the NASDAQ router will allow NASDAQ to continue to qualify for this same rate with respect to the orders that it routes to BX, it is at least theoretically possible that an unexpected decrease in demand for NASDAQ's routing services during a particular month could cause NASDAQ

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] SR–BX–2011–030 (May 25, 2011).

to receive a lower credit with respect to the orders it routes to BX. In that case, NASDAQ believes that it would be unfair to members that opted to use the NASDAQ router to receive a lower rate than the $0.0014 rate they had expected. Accordingly, NASDAQ is amending its routing fee provisions to replace the current pass-through language with a stated credit of $0.0014 per share executed, which is the exact amount that NASDAQ expects to receive when routing to BX. Similarly, the NASDAQ fee schedule specifies the applicable fee for routing to venues such as the New York Stock Exchange. Such fees are, in some case, lower than the cost incurred by NASDAQ to route to such venues. In the case of orders routed to BX, however, NASDAQ expects the rebate it pays to match the rebate that it receives.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. All similarly situated members are subject to the same fee structure, and access to NASDAQ is offered on fair and non-discriminatory terms.

The proposed Attributable Market Provider program is reasonable because it will result in a fee reduction for members that qualify for the program, without increasing the costs borne by other members. Moreover, the proposed program is consistent with an equitable allocation of fees because it allocates a higher rebate to members that make significant contributions to NASDAQ market quality by making markets in a large number of stocks and that contribute to price discovery by posting attributable quotes/orders. Although members qualifying for the program may use non-attributed and non-displayed orders, the enhanced rebate will be paid only with respect to attributable, displayed liquidity. Moreover, NASDAQ believes that the program may encourage market makers to become active in more stocks and display more shares of liquidity, thereby benefitting other market participants that will receive a more complete understanding of the supply and demand for particular stocks and that will be able to access the liquidity displayed by such market makers.

With regard to the change in language describing rebates provided for routing to BX, NASDAQ believes that the change is reasonable and equitable because it is designed to ensure that members using NASDAQ to route to BX continue to receive the same credit that they currently receive when routing to BX. This credit, in turn, is designed to reflect the credit that NASDAQ receives from BX. Moreover, the change is equitable because it is designed to ensure that members receive the credit that they expect to receive when using NASDAQ to route to BX. Because the credit received by NASDAQ would decrease only in the event of a significant decrease in the usage of NASDAQ's router, NASDAQ believes that it would be unfair to members that continue to use the router if their credit was affected by the usage of other members. Accordingly, establishing a specified credit in the fee rule will ensure that members are unaffected in the unlikely event that the rebate received by NASDAQ decreases.

Finally, NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. NASDAQ believes that the proposed rule change reflects this competitive environment because it will increase the rebate paid to certain active market makers, while maintaining current rebates with respect to routing to BX.

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. Because the market for order execution and routing is extremely competitive, members may readily opt to disfavor NASDAQ's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–2011–072 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–2011–072. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–072 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14671 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64627; File No. SR–NYSEArca–2011–35]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services To Replace Numerical Thresholds With Percentage Thresholds for Tier Volume Requirements, Add a New Volume Tier and Increase the Credit That Lead Market Makers Receive for Execution of Orders That Provide Undisplayed Liquidity Using Post No Preference Blind Orders

June 8, 2011.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 1, 2011, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Schedule of Fees and Charges for Exchange Services (the ''Schedule'') to: (i) Replace numerical thresholds with percentage thresholds for tier volume requirements (ii) add a new volume tier and (iii) increase the credit that Lead Market Makers (''LMMs'') receive for execution of orders that provide undisplayed liquidity using Post No Preference Blind (PNP B) orders. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.nyse.com,* and the Commission's Web site at *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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

Effective June 1, 2011, NYSE Arca proposes to make several changes to the Schedule, which are discussed in greater detail below.

Tier Volume Requirements: Replacing Numerical Thresholds With Percentage Thresholds

The Exchange proposes to change the Tier 1 and Tier 2 volume requirements from numerical thresholds (*e.g.,* 50 Million shares) to percentage thresholds of average U.S. consolidated daily volumes (*e.g.,* 0.70% of the volumes). Volume requirements to reach the tiered pricing levels will adjust each calendar month based on U.S. average daily consolidated share volume in Tape A, Tape B, Tape C securities (''U.S. ADV'') for that given month. U.S. ADV is equal to the volume reported by all exchanges and trade reporting facilities to the Consolidated Tape Association (''CTA'') Plan for Tapes A, B and C securities, however, U.S. ADV does not include trades on days when the market closes early. The percentage approach is in line with those adopted by NASDAQ Stock Market LLC and EDGX for liquidity providers.[6]

Transactions that are not reported to the Consolidated Tape, such as odd-lots and Crossing Session 2 transactions, are not included in U.S. ADV. The Exchange currently makes this data publicly available on a T + 1 basis from a link at *http://www.nyxdata.com/US-and-European-Volumes.*

Currently, a customer's eligibility for Tier 1 and Tier 2 is based on its achieving certain levels of liquidity provision that vary depending on overall trading volumes during the month. Thus, a customer qualifies for the Tier 1 or Tier 2 pricing based on the U.S. ADV for that given month as follows:

(i) When U.S. ADV is 8 billion shares or less, the requirement for adding liquidity is 50 million shares (for Tier 1) and 20 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined;

(ii) when U.S. ADV is greater than 8 billion up to 10 billion shares, the requirement for adding liquidity is 55 million shares (for Tier 1) and 25 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined;

(iii) when U.S. ADV is greater than 10 billion up to 11 billion shares, the requirement for adding liquidity is 65 million shares (for Tier 1) and 30 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined;

(iv) when U.S. ADV is greater than 11 billion up to 12 billion shares, the requirement for adding liquidity is 75 million shares (for Tier 1) and 35 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined;

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 64453 (May 10, 2011), 76 FR 28252 (May 16, 2011); and Securities Exchange Act Release No. 64452 (May 10, 2011), 76 FR 28252 (May 16, 2011). *See* Nasdaq Stock Market LLC Price List—Trading & Connectivity, ''Add and Remove Rates'' at *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2#rebates* and EDGX Exchange Fee Schedule, n. 1 at *http://www.directedge.com/Membership/FeeSchedule/EDGXFeeSchedule.asp.*

(v) when U.S. ADV is greater than 12 billion up to 13 billion shares, the requirement for adding liquidity is 85 million shares (for Tier 1) and 40 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined;

(vi) when U.S. ADV is greater than 13 billion shares, the requirement for adding liquidity is 95 million shares (for Tier 1) and 45 million shares (for Tier 2) average daily volume in Tape A, Tape B, and Tape C combined.

NYSE Arca's current rate per share structure for customers (excluding Lead Market Makers) is provided in the table below.

Tier	Current tier requirements and pricing	Tape A			
	Arca daily adding requirement (1) in shares in excess of:	Rebate for adding	Fee for removing	Routing to NYSE (2)	Routing to other venues
Tier 1	50–95 Million shares	$(0.0030)	$0.0030	$0.21/ $0.23	$0.0030
Tier 2	20–45 Million shares	(0.0029)	0.0030	0.21/ 0.23	0.0030
All Others	Below 20 Million shares	(0.0021)	0.0030	0.21/ 0.25	0.0030

Tier	Current tier requirements and pricing	Tape C		
	Arca daily adding requirement (1) in shares in excess of:	Rebate for adding	Fee for removing	Routing to other venues
Tier 1	Arca daily adding requirement (1) in shares in excess of:.			
Tier 1	50–95 Million shares	$(0.0030)	$0.0030	$0.0030
Tier 2	20–45 Million shares	(0.0029)	0.0030	0.0030
All Others	Below 20 Million shares	(0.0021)	0.0030	0.0035

Tier	Current tier requirements and pricing	Tape B		
	Arca daily adding requirement (1) in shares in excess of:	Rebate for adding	Fee for removing	Routing to other venues
Tier 1	50–95 Million shares	$(0.0023)	$0.0028	$0.0029
Tier 2	20–45 Million shares	(0.0022)	0.0028	0.0029
All Others	Below 20 Million shares	(0.0022)	0.0030	0.0035

1. Depending on U.S. Consolidated ADV as described in the previous text.
2. In Tape A securities, the routing fee to the NYSE using NYSE Arca's Primary Sweep Order is $0.21 per 100 shares, otherwise the standard routing fee applies as noted in the table. The Primary Sweep Order (PSO) is a market or limit order that sweeps the NYSE Arca Book and routes any remaining balance to the primary listing market. All orders with a PSO designation should be marketable. Non-marketable orders will function as regular limit orders.

In order to adopt a requirement that is consistent from month to month, NYSE Arca is modifying the requirement so that it is directly tied to a customer's percentage of total U.S. ADV, with any customer providing liquidity that represents 0.70% or more of the total U.S. ADV becoming eligible for Tier 1 and 0.30% or more, but less than 0.70% of the total U.S. ADV becoming eligible for Tier 2. NYSE Arca is also introducing a new Tier 3 based on a customer providing liquidity that represents 0.20% or more, but less than 0.30% of total consolidated volume (which is discussed in greater detail below).

NYSE Arca is moving to the percentage approach for several reasons. The Exchange believes that it is a more straightforward way to communicate floating volume tiers and, as noted above, other exchanges have adopted a similar approach. The Exchange notes that the percentage approach allows tiers to move in sync with consolidated volume, whereas the current approach has distinct break points and is set at varying percentages of consolidated volume. For example, under the current approach the Tier 1 level is set at 50 million shares of U.S. ADV when the consolidated volume level is below 8 billion U.S. ADV, whereas the proposed percentage approach will allow the Tier 1 level to move below 50 million shares of U.S. ADV to better accommodate customers in a lower volume environment, such as the industry has been recently experiencing. The Exchange also believes that the percentage approach will make the amount of liquidity provision required to achieve a given tier more manageable for customers and less prone to month-to-month changes than under the current approach. For example, under the current approach, if U.S. ADV increased from 7.95 billion to 8.05 billion, an increase of 1.25%, the Tier 1 provider requirement increases from 50 million ADV to 55 million ADV, an increase of 10%. In this case, the percentage change in customer tier requirement is much greater than that of the market volumes. Moreover, under the percentage approach, to qualify for Tier 1, for example, the customer would be required to provide 0.70% of the total U.S. ADV, regardless of the volume during that month. The proposed change will ensure that a customer providing that level of liquidity will consistently receive the Tier 1 credits, whereas a customer providing that level of liquidity under the current schedule might receive the Tier 1 credits in some months but not in others as overall market volumes fluctuated.

New Volume Tier

As noted previously, the Exchange is proposing a new pricing tier, Tier 3, with respect to volumes representing 0.20% or more, but less than 0.30% of the total U.S. ADV, in order to create a tier for customers that provide a specified minimum level of liquidity less than currently contemplated by Tier 1 and Tier 2. Customers who qualify for Tier 3 will receive a credit of $0.0025

per share for orders that provide liquidity to the Book for Tape A and Tape C Securities and $0.0022 per share for orders that provide liquidity to the Book for Tape B Securities. Additionally, such customers will be charged a fee of $0.0030 per share for orders that take liquidity from the Book for Tape A and Tape C Securities and $0.0028 per share for orders that take liquidity from the Book for Tape B Securities. Finally, such customers also will be charged a fee of $0.0030 per share for orders routed outside the Book to any away market centers other than the NYSE for Tape A and Tape C Securities and $0.0029 per share for orders routed outside the Book to any away market centers other than the NYSE for Tape B Securities. For all other fees and credits, basic rates apply. Tier 3 would be expected to benefit customers whose order flow provides added levels of liquidity, but are currently not eligible for Tier 1 and Tier 2, thereby contributing to the depth and market quality of the Book.

The new NYSE Arca rates per share for each Tier for customers (excluding Lead Market Makers) are provided in the table below.

Tier	Current tier requirements and pricing	Tape A				Tape C		
	Arca daily adding requirement as % of U.S. ADV of:	Rebate for adding	Fee for removing	Routing to NYSE (1)	Routing to other venues	Rebate for adding	Fee for removing	Routing to other venues
Tier 1 ..	0.70% or more.	$(0.0030)	$0.0030	$0.21/$0.23	$0.0030	$(0.0030)	$0.0030	$0.0030
Tier 2 ..	0.30% or more, but less than 0.70%.	(0.0029)	0.0030	0.21/0.23	0.0030	(0.0029)	0.0030	0.0030
Tier 3 ..	0.20% or more, but less than 0.30%.	(0.0025)	0.0030	0.21/0.23	0.0030	(0.0025)	0.0030	0.0030
All Others.	Below 0.20%.	(0.0021)	0.0030	0.21/0.25	0.0030	(0.0021)	0.0030	0.0035

Tier	Current tier requirements and pricing	Tape B		
	Arca daily adding requirement as % of U.S. ADV of:	Rebate for adding	Fee for removing	Routing to other venues
Tier 1	0.70% or more	$ (0.0023)	$0.0028	$0.0029
Tier 2	0.30% or more, but less than 0.70%	(0.0022)	0.0028	0.0029
Tier 3	0.20% or more, but less than 0.30%	(0.0022)	0.0028	0.0029
All Others	Below 0.20%	(0.0022)	0.0030	0.0035

1. In Tape A securities, the routing fee to the NYSE using NYSE Arca's Primary Sweep Order is $0.21 per 100 shares, otherwise the standard routing fee applies as noted in the table. The Primary Sweep Order (PSO) is a market or limit order that sweeps the NYSE Arca Book and routes any remaining balance to the primary listing market. All orders with a PSO designation should be marketable. Non-marketable orders will function as regular limit orders.

Lead Market Maker Rebates

The Exchange also proposes to amend the Schedule to modify the structure of the transaction credits that it provides Lead Market Makers (''LMMs'') for supplying undisplayed liquidity in the NYSE Arca marketplace primary listed securities in which they are registered as a LMM.

Currently, a LMM receives a rebate of $0.0023 per share for executions made using the Post No Preference Blind (PNP B) order type when its interest is undisplayed. In return for LMMs meeting unique quoting obligations, NYSE Arca is proposing that LMMs receive a rebate of $0.0030 per share for execution of orders that provide undisplayed liquidity using PNP B orders types in such a security.

PNP B Orders are undisplayed limit orders priced at or through the Protected Best Bid and Offer (PBBO), with a tradable price set at the contra side of the PBBO. When the PBBO moves away from the price of the PNP B and the prices continue to overlap, the limit price of the PNP B will remain undisplayed and its tradable price will be adjusted to the contra side of the PBBO. When the PBBO moves away from the price of the PNP B and the prices no longer overlap, the PNP B shall convert to a displayed PNP limit order.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[7] in general, and Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposal does not constitute an inequitable allocation of fees, as all similarly situated member organizations and other market participants will be subject to the same fee structure, and access to the Exchange's market is offered on fair and non-discriminatory terms.

With respect to the replacement of share thresholds with percentage thresholds for certain of NYSE Arca's existing pricing tiers, NYSE Arca believes that the change is reasonable, because it will result in more predictability from month to month

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

with respect to the levels of liquidity provision required to receive the applicable pricing levels. Although the changes will make it easier to achieve applicable pricing tiers in some months and more difficult in other months, depending on overall market volumes, NYSE Arca believes the levels of activity required to achieve higher tiers are generally consistent with existing requirements for these tiers. Moreover, like existing pricing tiers tied to volume levels, as in effect at NYSE Arca and other markets, the proposed pricing tiers are equitable and non-discriminatory because they are open to all customers on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes. NYSE Arca believes that the overall effect of the changes may make it easier for customers to receive higher rebates in months with lower trading volumes, thereby reducing prices for those customers that were previously unable to qualify for an enhanced credit, but that are able to do so under the revised pricing schedule.

Similarly, Tier 3, the proposed new pricing tier for customers providing liquidity that represents 0.20% or more, but less than 0.30% of the total U.S. ADV will provide customers with greater opportunities to receive a higher rebate. Accordingly, the proposed Tier 3 is equitable and non-discriminatory because it is open to all customers on an equal basis and provides discounts that are reasonably related to the value to an exchange's market quality associated with higher volumes.

With respect to the increase of the LMM rebate for undisplayed PNP B liquidity, NYSE Arca believes that the change is reasonable, because it will provide the LMM with incentives to increase liquidity in a security. Moreover, LMMs have unique quoting obligations including maintaining continuous two-sided quotes, NBBO requirements, minimum displayed size requirements, minimum quoted spread requirements and participation requirements for opening and closing auctions. The undisplayed PNP B orders add liquidity to the Book and enhance the possibility of price improvement; however, their undisplayed status does not contribute to the BBO. To the contrary, the rebate LMMs receive for displayed liquidity executions is much larger, which is consistent with the added transparency created through decreased quoted spreads and increased quoted sizes of the BBO.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The Exchange believes that the proposed rule change reflects this competitive environment because it will broaden the conditions under which customers may qualify for higher liquidity provider credits.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [9] of the Act and subparagraph (f)(2) of Rule 19b–4 [10] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Arca.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–35 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–NYSEArca–2011–35.* This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–NYSEArca–2011–35* and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14660 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64632; File No. SR–EDGX–2011–17]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

June 8, 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 June 1, 2011, the EDGX Exchange, Inc. (the ''Exchange'' or the ''EDGX'') 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 change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

For customer internalization, which occurs when two orders presented to the Exchange from the same Member (*i.e.,* MPID) are presented separately and not in a paired manner, but nonetheless inadvertently match with one another,[4] the Exchange charges $0.0001 per share per side of an execution (for adding liquidity and for removing liquidity) for Flags E and 5. This charge occurs in lieu of the standard or tiered rebate/removal rates. Therefore, Members incur a total transaction cost of $0.0002 per share for both sides of an execution for customer internalization.

In SR–EDGX–2011–13 (April 29, 2011), the Exchange represented that ''it will work promptly to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.'' In order to ensure that the internalization fee is no more favorable than the prevailing maker/taker spread of $0.0007 for the standard add (rebate of $0.0023)—standard removal rate ($0.0030 charge per share), the Exchange is proposing to charge $0.00035 per side for customer internalization (Flags E and 5). However, if a Member posts 10,000,000 shares or more of average daily volume (''ADV'') to EDGX, then the Member would get the current rate of $0.0001 per share per side for customer internalization.[5] If this occurs, then the Member's rate for inadvertently matching with itself decreases to $0.0001 per share per side, as the Member has met the least restrictive criteria to satisfy a tier (*i.e.,* Super Tier, Ultra Tier, Mega Tier). The Exchange is proposing to add language clarifying this point to footnote 11 and append the reference to footnote 11 to Flags E and 5.

In each case (both tiered and standard rates), the charge for Members inadvertently matching with themselves is no more favorable than each maker/taker spread. The applicable rate for customer internalization thus allows the Exchange to discourage potential wash sales.

The Exchange also proposes to add footnote 1 to the ''MM'' flag to clarify that Flag MM executions (adding liquidity to MidPoint Match) count towards the tiered rates listed in footnote 1 (Super Tier, Ultra Tier, Mega Tier).

The Exchange proposes to amend footnote 3 to reflect NYSE's increase in charge from $0.0021 per share to $0.0023 per share for removing liquidity in stocks priced below $1.00.

Currently, Members can qualify for the Mega Tier and be provided a rebate of $0.0032 per share for liquidity added on EDGX in either of two ways: (i) If the Member on a daily basis, measured monthly, posts 0.75% of the Total Consolidated Volume (''TCV'') [6] in average daily volume; or (ii) if the Member, on a daily basis, measured monthly, posts 15,000,000 shares more than their February 2011 average daily volume, provided that their February 2011 average daily volume equals or exceeds 1,000,000 shares added to EDGX. The Exchange proposes to amend the Mega Tier criteria in (ii), above, for achieving a $0.0032 rebate to indicate that Members will qualify for such rebate if, on a daily basis, measured monthly, they post 10,000,000 shares more than their February 2011 average daily volume added to EDGX. In an effort to make it easier for Members to achieve the Mega Tier rebate during lower transaction volume days, the Exchange would like to lower the current daily share posting requirement to 10,000,000 shares from 15,000,000 shares. Additionally, in order to allow more constituents to reach the Mega Tier in general, the Exchange would also like to remove, in its entirety, the baseline requirement that a Member's February 2011 average daily volume equals or exceeds 1,000,000 shares.

Finally, the Exchange proposes to decrease the rebate on Flag C (routed to Nasdaq BX, removes liquidity) from $0.0014 per share to $0.0005 per share.

EDGX Exchange proposes to implement these amendments to the Exchange fee schedule on June 1, 2011.

Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Exchange Act,[7] in general, and furthers

[4] Members are advised to consult Rule 12.2 respecting fictitious trading.

[5] As noted in SR–EDGX–2011–13 (April 29, 2011), EDGX has a variety of tiered rebates ranging from $0.0030–$0.0034 per share, which makes its maker/taker spreads range from $0 (standard removal rate—Super Tier rebate), –$0.0001, (standard removal rate—Ultra Tier rebate) –$0.0002 (standard removal rate—Mega Tier rebate of $0.0032), and –$.0004 (standard removal rate—Mega Tier rebate of $0.0034 per share). As a result of the customer internalization charge, Members who internalized would be charged $0.0001 per share per side of an execution (total of $0.0002 per share) instead of capturing the maker/taker spreads resulting from achieving the tiered rebates.

[6] TCV is defined as volume reported by all exchanges and trade reporting facilities to the consolidated transaction reporting plans for Tapes A, B and C securities.

[7] 15 U.S.C. 78f.

the objectives of Section 6(b)(4),[8] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the increased fee for customer internalization of $0.00035 per share per side of an execution for both Flags E (regular trading session) and 5 (pre and post market) represents an equitable allocation of reasonable dues, fees, and other charges as it is designed to introduce a fee for Members who inadvertently match with one another, thereby discouraging potential wash sales. The increased fee also allows the Exchange to offset its administrative, clearing, and other operating costs incurred in executing such trades. Finally, the fee is equitable in that it is in line[9] with the EDGX fee structure which currently has a maker/taker spread of $0.0007 per share (the standard rebate to add liquidity on EDGX is $0.0023 per share, while the standard fee to remove liquidity is $0.0030 per share).

With respect to Members that satisfy the criteria for various tiered rebates, EDGX notes that its maker/taker spreads range from $.0007 (standard add − standard removal rate), $0 (standard removal rate − Super Tier rebate), −$0.0001, (standard removal rate − Ultra Tier rebate) −$0.0002 (standard removal rate − Mega Tier rebate of $0.0032), and −$.0004 (standard removal rate − Mega Tier rebate of $0.0034 per share). As a result of the proposed charge for Members inadvertently matching with themselves, such Members would be charged $0.00035 per share per side of an execution (total of $0.0007 per share) for those not meeting the criteria for the Super Tier (posting 10,000,000 shares or more of ADV to EDGX). For those meeting the criteria for any tier, Members would charged $0.0002 per share instead of capturing the maker/taker spreads resulting from achieving the tiered rebates, as described above.

This increased fee per side of an execution ($.00035 per side instead of $0.0001 per side per share), yielding a total cost of $0.0007, thus brings the internalization fee in line with the current maker/taker spreads.[10] The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The increase in fee from $0.0021 per share to $0.0023 per share, as reflected in footnote 3, is assessed by NYSE for stocks priced below $1.00. This increase in fee is a pass through of NYSE's increased fee, effective January 3, 2011. The same rate change was made for orders in securities priced $1 and over for securities that are routed or re-routed to NYSE (Flag D) in the Exchange's fee filing effective January 1, 2011.[11] EDGX believes that it is reasonable and equitable to pass on these fees to its members.

The Exchange believes that amending the criteria to qualify for the Mega Tier represents an equitable allocation of reasonable dues, fees, and other charges since higher rebates are directly correlated with more stringent criteria.

The Mega Tier rebate of $0.0034/$0.0032 per share has some of the most stringent criteria associated with it, and is $0.0003/$0.0001 greater than the Ultra Tier rebate ($0.0031 per share) and $0.0004/$0.0002 greater than the Super Tier rebate ($0.0030 per share).

For example, based on average TCV for April 2011 (7.0 billion), in order for a Member to qualify for the Mega Tier rebate of $0.0034, the Member would have to add or route at least 4,000,000 shares of average daily volume during pre and post-trading hours and add a minimum of 38,000,000 shares of average daily volume on EDGX in total, including during both market hours and pre and post-trading hours. The criteria for this tier is the most stringent as fewer Members generally trade during pre and post-trading hours because of the limited time parameters associated with these trading sessions. The Exchange believes that this higher rebate awarded to Members would incent liquidity during these trading sessions. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate.

Another way a Member can qualify for the Mega Tier (with a rebate of $0.0032 per share) would be to post 0.75% of TCV. Based on average TCV for April 2011 (7.0 billion), this would be 52.5 million shares on EDGX. A second method, as proposed in this filing, to qualify for the rebate of $0.0032 per share would be to post 10,000,000 shares more than the Member's February 2011 average daily volume added to EDGX. The Exchange believes that requiring Members to post 10,000,000 shares more than a February 2011 baseline average daily volume encourages Members to add increasing amounts of liquidity to EDGX each month. Such increased volume increases potential revenue to the Exchange, and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs would allow the Exchange to pass on the savings to Members in the form of a higher rebate. The increased liquidity also benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

In order to qualify for the Ultra Tier, which has less stringent criteria than the Mega Tier, the Member would have to post 0.50% of TCV. Based on average TCV for April 2011 (7.0 billion shares), this would be 35 million shares on EDGX.

Finally, the Super Tier has the least stringent criteria of the tiers mentioned above. In order for a Member to qualify for this rebate, the Member would have to post at least 10 million shares on EDGX. As stated above, these rebates also result, in part, from lower administrative and other costs associated with higher volume. The Exchange believes that the decreased rebate on Flag C when EDGX routes to Nasdaq BX is designed to provide for the equitable allocation of reasonable dues, fees and other charges as it represents a straight pass through of Nasdaq BX's decreased rebate from $0.0014 per share to $0.0005 per share, which is effective June 1, 2011. EDGX believes that it is reasonable and equitable to pass on these fees to its members.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they

[8] 15 U.S.C. 78f(b)(4).

[9] In each case, the internalization fee is no more favorable to the Member than each prevailing maker/taker spread.

[10] The Exchange will continue to ensure that the internalization fee is no more favorable than each prevailing maker/taker spread.

[11] *See* SR–EDGA–2010–26 (December 28, 2010).

deem fee levels at a particular venue to be excessive. The proposed rule changes reflect a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [12] and Rule 19b–4(f)(2) [13] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–EDGX–2011–17 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–EDGX–2011–17. 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 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–EDGX–2011–17 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14662 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64634; File No. SR–EDGA–2011–17]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGA Exchange, Inc. Fee Schedule

June 8, 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 May 31, 2011, the EDGA Exchange, Inc. (the ''Exchange'' or the ''EDGA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGA Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGA Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.directedge.com.*

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A Member is any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The Exchange proposes to amend footnote 3 to reflect NYSE's increase in charge from $0.0021 per share to $0.0023 per share for removing liquidity in stocks priced below $1.00. The Exchange also proposes to decrease the rebate on Flag C (routed to Nasdaq BX, removes liquidity) from $0.0014 per share to $0.0005 per share.

The Exchange proposes to implement these amendments to its fee schedule on June 1, 2011.

Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

The Exchange believes that the decreased rebate on Flag C when EDGA routes to Nasdaq BX is designed to provide for the equitable allocation of reasonable dues, fees and other charges as it represents a straight pass through of Nasdaq BX's decreased rebate from $0.0014 per share to $0.0005 per share, which is effective June 1, 2011. EDGA believes that it is reasonable and equitable to pass on these fees to its members. The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The increase in fee from $0.0021 per share to $0.0023 per share, as reflected in footnote 3, is assessed by NYSE for stocks priced below $1.00. This increase in fee is a pass through of NYSE's increased fee, effective January 3, 2011. The same rate change was made for orders in securities priced $1 and over for securities that are routed or re-routed to NYSE (Flag D) in the Exchange's fee filing effective January 1, 2011.[6] EDGA believes that it is reasonable and equitable to pass on these fees to its members. The Exchange believes that the proposed rate is non-discriminatory in that it applies uniformly to all Members.

The Exchange also notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b–4(f)(2)[8] 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the 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–EDGA–2011–17 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGA–2011–17. 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 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–EDGA–2011–17 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14663 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] *See* SR–EDGA–2010–26 (December 28, 2010).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64636; File No. SR–BX–2011–030]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

June 8, 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 May 25, 2011, NASDAQ OMX BX, Inc. (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 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 pricing for member using the NASDAQ OMX BX Equities System. The Exchange will implement the proposed change on June 1, 2011. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com/,* at the Exchange'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, 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

BX is proposing to modify its fees for trades that execute at prices at or above $1.[3] BX has a pricing model under which members are charged for the execution of quotes/orders posted on the BX book (*i.e.,* quotes/orders that provide liquidity), while members receive a rebate for orders that access liquidity. Since BX introduced this pricing model in 2009, several other exchanges have emulated it, including the EDGA Exchange, the BATS–Y Exchange, and the CBOE Stock Exchange (''CBSX''). Currently, BX charges a fee to add liquidity of $0.0018 per share executed, while providing a rebate for accessing liquidity of $0.0014 per share executed.

Effective June 1, 2011, BX will introduce a tiered pricing structure for both the fee and rebate portion of the pricing schedule. First, although they are not paid a credit for liquidity provision, certain BX members nevertheless find it advantageous to post liquidity because the rebate paid to liquidity takers encourages more rapid execution of posted orders. To provide further incentives to members to post liquidity through BX, the Exchange is introducing a ''Qualified Liquidity Provider'' program. A Qualified Liquidity Provider is a BX member with (i) Shares of liquidity provided and (ii) total shares of liquidity accessed and provided in all securities through one or more of its NASDAQ OMX BX Equities System Market Participant Identifiers (''MPIDs'') that represent more than 0.40% and 0.50%, respectively, of the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during the month. With respect to displayed orders entered through any MPID of a Qualified Liquidity Provider that is a Qualified MPID, the member will be charged $0.0015 per share executed, rather than the current rate of $0.0018 per share executed. A ''Qualified MPID'' is an MPID through which the member quotes at the national best bid or offer (''NBBO'') an average of at least 25% of the time during regular market hours (9:30 a.m. through 4 p.m.) during the month, in at least 150 securities. For each trading day, the percentage of time that a member quotes at the NBBO for each security will be calculated by determining the percentage of time quoting at the best bid and the percentage of time quoting at the best offer, and determining the average of the two percentages. Thus, for a given security, if a member quotes at the best bid 10% of the day, and at the best offer 55% of the day, its average at the NBBO will be 32.5% ((10 + 55)/2). The percentage for each day will then be added and divided by the number of trading days in the month to determine the overall percentage in each stock.[4]

With respect to the rebate paid to members accessing liquidity, BX is modifying the fee schedule to provide that the current credit of $0.0014 will be paid only with respect to orders entered by a member through an MPID through which the member accesses an average daily volume of 3.5 million or more shares of liquidity during the month, or provides an average daily volume of 25,000 or more shares of liquidity during the month. Because these requirements are not especially high, BX expects that most members seeking the higher rebate will be able to achieve at least one of the criteria. However, for members that do not achieve these requirements, the credit will be $0.0005 per share executed.[5] The change is designed to ensure that the most favorable rebate is provided to members that consistently support the BX market through liquidity provision or order routing at the levels required by the new tier. To the extent that the change results in a fee increase for some members, it will also help to offset the cost of implementing the Qualified Liquidity Provider program.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Although BX is not modifying its fees for securities priced below $1, it is moving the language describing such fees into Rule 7018(b) and redesignating existing Rule 7018(b) as Rule 7018(c).

[4] The program is similar to the Supplemental Liquidity Provider program of the New York Stock Exchange, under which members may earn progressively higher liquidity provider credits if they satisfy a requirement of quoting at the NBBO 10% or more of the time and add specified levels of liquidity to the book, with the credit rising as the amount of liquidity provided increases. *See http://www.nyse.com/pdfs/nyse_equities_pricelist.pdf.*

[5] By comparison, under the fee schedule of the EDGA Exchange, a member accessing liquidity can earn a rebate of $0.00015 per share executed if it adds or routes an average daily volume of 50,000 shares on the EDGA Exchange, but is charged $0.0030 per share executed if it does not. *See http://www.directedge.com/Membership/FeeSchedule/EDGAFeeSchedule.aspx.* Thus, both aspects of BX's proposed credit tiers are more favorable to its members than the corresponding credit/fee of the EDGA Exchange.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. All similarly situated members are subject to the same fee structure, and access to BX is offered on fair and non-discriminatory terms.

The new program for Qualified Liquidity Providers is reasonable and equitable because it will reduce fees for members that contribute to BX's market quality by directing a relatively large quantity of orders to BX and quoting at the NBBO with regularity in a large number of stocks. Volume-based discounts such as the proposed Qualified Liquidity Provider program have been widely adopted in the cash equities markets, and are equitable because they are open to all members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated the requirements for the favorable pricing tier. By adding not only volume requirements but also requirements for Qualified Liquidity Providers to quote at the NBBO with some degree of consistency, BX believes that it can use pricing incentives to increase quoted depth at the NBBO, thereby also benefiting market participants that direct orders to the quotes/orders of Qualified Liquidity Providers.

Similarly, the proposed pricing tier with respect to BX's credit for members accessing liquidity is designed to provide incentives for members to contribute to BX's market quality by accessing and/or providing liquidity. Orders that provide liquidity increase the likelihood that members seeking to access liquidity will have their orders filled, while orders that access liquidity encourage liquidity providers to post in the expectation of having their own orders filled. Accordingly, BX believes that it is reasonable and equitable to use pricing incentives, such as a higher rebate for accessing liquidity, to encourage members to increase their participation in the market either through liquidity provision or routing of liquidity accessing orders. BX also notes that the credits it offers, both to members achieving the tier and those that do not, are more favorable than the credit/fee charged by the EDGA Exchange in comparable circumstances.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. BX believes that the proposed rule change reflects this competitive environment because it will use pricing incentives to encourage greater use of BX's order execution facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX 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. Because the market for order execution is extremely competitive, members may readily opt to disfavor BX's execution services if they believe that alternatives offer them better value. For this reason and the reasons discussed in connection with the statutory basis for the proposed rule change, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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 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–2011–030 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–2011–030. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2011–030 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14664 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 64629; File No. SR–Phlx–2011–77]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NASDAQ OMX PHLX LLC To Amend the Fee Schedule Regarding Fees Assessed for the Installation of Certain Co-Location Services

June 8, 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 May 27, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Fee Schedule regarding fees assessed for the installation of certain co-location services. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on June 1, 2011.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange 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 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule regarding fees assessed for the installation of certain co-location services to further incentivize the use of the co-location services. The installation fees for the following co-location services will be waived commencing June 1, 2011 and ending June 30, 2011 (the ''designated period''). Beginning July 1, 2011, the above-referenced waived fees will resume in full at the amount prior to [sic] designated period. The Exchange proposes to waive the following installation fees during the designated period:

1. *Section X(a):* Installation fees for new cabinets with power.

2. *Section X(b):* Installation fees for external telecommunication, inter-cabinet connectivity, connectivity to The Nasdaq Stock Market LLC and market data connectivity related to an order for a new cabinet. However, the one-time telecommunication connectivity expedite fee [3] will not be waived during the designated period.

3. *Section X(c):* Installation fees for cabinet power related to an order for a new cabinet.

4. *Section X(d):* Installation fees for cooling fans, perforated floor tiles and fiber downspouts, which are necessary items to support a higher density cabinet and fiber cross connects, relating to an order for a new cabinet placed during the designated period. Installation fees for other items that are customized or options are not waived during the time period.

The following requirements must be met to receive the waiver of the installation fee:

1. The new cabinet order must be placed in the CoLo Console [4] during the designated period; and

2. the new cabinet must be live within 90 days of the date of the order.[5]

[3] The one-time telecommunication connectivity expedite fee is a fee for an optional request to complete the installation in a shorter time period than the install timeframes.

[4] The ''CoLo Console'' is a Web-based ordering tool that is utilized by Phlx to place co-location orders.

[5] Exchange staff generally installs and makes operational a new cabinet within 90 days of the date of the order (the ''live date''). The estimated live date is communicated to the customer. However, there may be instances where the customer desires the live date to be later than the estimated live date provided by Exchange staff. In such instances, the live date cannot extend beyond 90 days of the date of the order.

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 Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls. The proposed installation fees in [sic] which the Exchange seeks a temporary waiver will be assessed equally to customers that place an order for a new cabinet during the designated period. The proposed amendments will provide an incentive for customers to avail themselves of the designated co-location services. The proposal is similar to the waiver of fees during an introductory period for a product, and is equitable because all persons may avail themselves of the waiver during the period of its availability.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[8] 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,

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2011–77 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–Phlx–2011–77. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2011–77 and should be submitted on or before July 5, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Cathy H. Ahn,

Deputy Secretary.

[FR Doc. 2011–14661 Filed 6–13–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #12615 and #12616]

Oklahoma Disaster #OK–00050

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1989–DR), dated 06/06/2011.

Incident: Severe Storms, Tornadoes, Straight-line Winds, and Flooding.

Incident Period: 05/22/2011 through 05/25/2011.

Effective Date: 06/06/2011.

Physical Loan Application Deadline Date: 08/05/2011.

Economic Injury (EIDL) Loan Application Deadline Date: 03/06/2012.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 06/06/2011, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans):

Canadian, Delaware, Grady, Kingfisher, Logan, Mcclain,

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Adair, Blaine, Caddo, Cherokee, Cleveland, Comanche, Craig, Garfield, Garvin, Lincoln, Major, Mayes, Noble, Oklahoma, Ottawa, Payne, Pontotoc, Pottawatomie, Stephens.

Arkansas: Benton.

Missouri: McDonald.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.250
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 12615B and for economic injury is 126160.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Jane M. D. Pease,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2011–14595 Filed 6–13–11; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Permanent Dam Safety Modification at Cherokee, Fort Loudoun, Tellico, and Watts Bar Dams, TN

AGENCY: Tennessee Valley Authority.

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and Tennessee Valley Authority's (TVA) procedures for implementing the National Environmental Policy Act (NEPA). TVA will prepare an environmental review (in the form of an environmental assessment [EA] or an environmental impact statement [EIS]) to address the potential impacts to the natural, physical, and human environment resulting from various alternatives for permanent modifications to the existing dam facilities at Cherokee, Fort Loudoun, Tellico, and Watts Bar dams in Tennessee. The level of review will be determined after the public scoping process has been completed. TVA is evaluating long-term permanent solutions for dam safety modifications to replace interim modifications that were implemented at the dams.

DATES: To ensure consideration, comments on the scope of the environmental issues must be postmarked or e-mailed no later than August 5, 2011. When a draft environmental review (either an EA or EIS) is prepared, it will be made available for public review.

ADDRESSES: Written comments should be sent to Kenneth P. Parr, NEPA Specialist, NEPA Compliance, Environmental Permits and Compliance, Tennessee Valley Authority, 1101 Market Street (LP 5U), Chattanooga, Tennessee 37402–2801. Comments may be e-mailed to *kpparr@tva.gov,* submitted by fax to 423–751–3230, or entered online at *http//www.tva.com/environment/reports/index.htm.*

FOR FURTHER INFORMATION CONTACT: David Lane, Environmental Engineer, Tennessee Valley Authority, 400 West Summit Hill Drive (GRN 2E), Knoxville, Tennessee, 37902–1499; *e-mail: jdlane@tva.gov.*

SUPPLEMENTARY INFORMATION:

Background

TVA evaluates its dam safety program regularly (especially as technology and standards evolve and when more or better data become available) and modifies its dams as needed to ensure the structural integrity of TVA dams and the safety of the public. Periodic updates regarding maximum flood conditions are conducted when parameters used in flood modeling change, *e.g.,* probable maximum precipitation or river operation guidelines. TVA assumes the most extreme weather event reasonably possible when determining maximum flood conditions of the river system. TVA's most recent probable maximum flood calculations indicate that a worst-case winter storm could cause water to go over the top of some dams even with the floodgates wide open, possibly causing dam failure. Failure of any dam would result in loss of stored water for navigation, impacts to fish and wildlife resources, loss of recreational opportunities, and possible property damage, personal injury, and loss of life. Failure also could result in failures to downstream dams.

To minimize the potential effects of a severe flooding event predicted by revised probable maximum flood modeling, precautionary measures have been implemented on top of the earth embankments at four (Cherokee, Fort Loudoun, Tellico, and Watts Bar) dams. These measures included raising dam elevations about 3 to 4 feet by placing interconnected, fabric-lined, sand-filled HESCO containers in order to safely pass predicted worst-case floodwaters, to avoid dam overtopping and possible impacts to the downstream embankment, and to provide additional floodwater storage capacity. The downstream embankment of Watts Bar Dam has also been strengthened with concrete matting.

TVA must now develop permanent solutions for the precautionary measures that were put in place to correct safety deficiencies identified at Cherokee, Fort Loudoun, Tellico and Watts Bar dams. The need for the proposed action is to prevent the impacts associated with dam failure. TVA has developed alternatives that consider the level of risk reduction to the public, constructability, potential environmental impacts, and cost.

Proposed Alternatives

TVA has performed preliminary internal scoping and identified a No Action Alternative and two Action Alternatives: permanent modifications to dam structures and removal of the temporary HESCO baskets before the end of their useful life.

The No Action Alternative is the current existing condition at the Cherokee, Fort Loudoun, Tellico, and Watts Bar dam sites. A permanent concrete mat structure has been installed in the downstream embankment of Watts Bar Dam, and HESCO baskets have been installed at Cherokee, Fort Loudoun, Tellico, and Watts Bar dams. These items would remain in place and would be maintained as needed. These temporary measures were installed to prevent floodwaters from potentially overtopping the dams and to ensure the integrity of the downstream embankments, thus increasing the public safety of downstream residents and the safety of TVA's critical nuclear facility operations.

Under the first Action Alternative, the HESCO baskets would be replaced, and permanent dam modifications would be made to each of the four dam structures. The potential modifications could include construction of concrete floodwalls, raising of earth embankments, or a combination of floodwalls and raised earth embankments. The permanent concrete mat structure in the downstream embankment of Watts Bar Dam would remain in place. Under this alternative, the potential for overtopping of the dams during a probable maximum flood event would be prevented. This would ensure that the integrity of the downstream embankments would be maintained and thereby increase the public safety of downstream residents and the safety of TVA's critical nuclear facilities.

Under the second Action Alternative, TVA would consider removal of the temporary HESCO baskets from the dam structures before the end of their useful life. The permanent concrete mat structure installed in the downstream embankment of Watts Bar Dam would remain. This alternative is similar to the situation at the dams prior to placing the HESCO baskets on the dams as an interim solution for management of the potential maximum flood events. Under this alternative, overtopping of the dams would be possible during a very low-risk probable maximum flood event. The downstream integrity of the dam embankments could be compromised, thus jeopardizing the public safety of downstream residents and the safety of TVA's critical facilities. The analysis of this alternative would contain a discussion/justification regarding the reasons for placing the baskets on top of the dams to address this low-risk event.

Proposed Issues To Be Addressed

The environmental review will contain descriptions of the existing environmental and socioeconomic resources within the area that would be affected by construction, operation, and maintenance of the proposed permanent dam modifications. Evaluation of potential environmental impacts to these resources will include, but will not necessarily be limited to, the potential impacts on water quality, aquatic and terrestrial ecology, endangered and threatened species, wetlands, aesthetics and visual resources, recreation, land use, historic and archaeological resources, and socioeconomic resources. The need and purpose of the project will be described. The final range of issues to be addressed in the environmental review will be determined, in part, from scoping comments. The preliminary identification of reasonable alternatives and environmental issues in this notice is not meant to be exhaustive or final.

Public and Agency Participation

The environmental review is being prepared to inform decision makers and the public about the potential environmental effects of TVA's options for minimizing the potential effects of a severe flooding event predicted by revised probable maximum flood modeling. The draft EA or EIS is anticipated to be available in late summer 2011. Any changes to this schedule will be posted on the TVA Web site: *http://www.tva.com/environment/reports/index.htm.* The environmental review process will also serve to inform the public and the decision makers of the reasonable measures that would be implemented to minimize adverse impacts. Other Federal, state, and local agencies and governmental entities are invited to provide scoping comments. These agencies include, but are not limited to,

the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, Tennessee Department of Environment and Conservation, and the Tennessee State Historic Preservation Officer.

The public is invited to submit comments on the scope of the environmental review no later than the date given under the **DATES** section of this notice. TVA will conduct an additional public review after the draft EA or EIS is prepared.

Dated: June 8, 2011.

Anda A. Ray,

Senior Vice President, Environment and Technology.

[FR Doc. 2011–14637 Filed 6–13–11; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0041]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that by a document dated April 22, 2011, the National Railroad Passenger Corporation (Amtrak) has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2011–0041.

Amtrak seeks approval of the proposed decrease of the limits of Hart Interlocking, milepost 32.7 on Amtrak's Springfield Line, Northeast Division East in Hartford, Connecticut. The proposed decrease of limits consists of moving the 2S signal on the siding south to the clearance point of the No. 12 switch adjacent to the 1S signal that is on track number 1; eliminating the 3S signal and making the No. 32 power-operated switch a hand-operated switch, which will be outside of the decreased interlocking limits

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 29, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

Issued in Washington, DC on June 9, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–14733 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2010–0174]

Petition for Modification of Single Car Air Brake Test Procedures

In accordance with Part 232 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated November 19, 2010, the Port Authority Trans-Hudson Corporation (PATH) has requested the Federal Railroad Administration (FRA) grant a modification of the single car air brake test procedures as prescribed in 49 CFR 232.305(a). FRA assigned the request Docket Number FRA–2010–0174.

PATH operates a fleet of 25 flat cars in consist with revenue cars utilized as locomotives in ''work'' trains, where the friction brakes operate in conjunction with the RT2 system of straight air brake employed on PATH cars. The single car air brake test described in Association of American Railroads (AAR) S–486 (incorporated by reference in 49 CFR 232.305) is intended for freight cars with automatic brake systems that are significantly different than the RT2 system utilized by PATH. As such, PATH believes that a brake system inspection and testing procedure similar to that performed on PATH MU locomotives is required since a conventional AAR S–486 single car air brake test cannot be performed on these flat cars.

PATH requests a modification to the single car air brake test procedure required in 49 CFR 232.305 by the adoption of ''Procedure for the Inspection/Testing of PATH Flat Cars'' (05/04/11 revision), Docket Number FRA–2010–0174–0004.1; and ''Procedure for the Inspection/Testing of PATH Flat Cars Addendum Brake Rigging Inspection and Slack Adjustment'' (05/04/11), Docket Number FRA–2010–0174–0005.1.

Copies of these documents and the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Docket Number FRA–2010–0174) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 15, 2011 will be considered by FRA before final action is taken. Pursuant to 232.307(d), if no comment objecting to the requested modification is received during the 60-day comment period, or if FRA does not issue a written objection to the requested modification, the modification will become effective August 29, 2011.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 9, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–14730 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0035]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 15, 2011, the American Short Line and Regional Railroad Association (ASLRRA), on behalf of seven of its member railroads, has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2011–0035.

In their petition, ASLRRA seeks the identical relief granted in FRA's March 5, 2010, decision in FRA Docket Number 2009–0078, related to 49 U.S.C. 21103(a)(4), for these additional seven railroads. In addition, subsequent to FRA's issuance of a final decision in Docket Number FRA–2009–0078, the York Railway submitted a comment in that docket seeking to become a party to the waiver. In its March 15, 2011, letter, FRA specifically indicated that ''[i]f a railroad listed on ASLRRA's Second Amended Exhibit A has not yet met the joint filing requirement of the [hours of service law] as outlined in FRA's March 5, 2010, letter, that railroad is not a party to this waiver.'' Recognizing that as a practical matter, the posting of FRA's final decision letter in Docket Number FRA–2009–0078 may have crossed with the submission of the York Railway's request to be included in the waiver. FRA is addressing that request in this docket (FRA–2011–0035). Accordingly, a copy of York Railway's submission has been placed in Docket Number FRA–2011–0035, and FRA will address that request for relief from the hours of service law requirements in conjunction with ASLRRA's April 15, 2011, petition.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 29, 2011 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 9, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–14732 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2005–21613]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated April 26, 2011, and an amending document dated May 3, 2011, the Association of American Railroads (AAR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR Part 229. FRA assigned the petition Docket Number FRA–2005–21613.

FRA granted an extension of waiver Docket Number FRA–2005–21613 to AAR on May 3, 2011, continuing an extensive testing and inspection program to determine extended clean, repair and test intervals for air brake valves and related components as required by the *Railroad Locomotive Safety Standards* at 49 CFR 229.27 *Annual tests* and 229.29 *Biannual tests.* Fourteen (14) separate groups of locomotives were identified for investigation in the waiver approval letter. Among the variables between groups are the model of electronic airbrake system used on the locomotives and whether the group of locomotives was manufactured by General Electric (GE) or ElectroMotive Diesel (EMD). AAR has now submitted additional requests for modification of this waiver. The first request is to add locomotives equipped with New York Air Brake (NYAB) CCB–26 model brake systems in the same group as locomotives equipped with CCB–II brake systems. Also, AAR has requested that the distinction between locomotive manufacturers be

dropped, thus reducing the number of groups to be tested.

In support of this petition, AAR submitted supporting documentation from NYAB attesting to the essential similarity of the CCB–26 brake system to the CCB–II brake system already covered under the waiver. In addition, AAR states that testing performed to date under this waiver has allayed concerns that air brake system performance would vary between EMD and GE locomotives.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by July 29, 2011will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or online at *http://www.dot.gov/privacy.html.*

Issued in Washington, DC on June 9, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory & Legislative Operations.

[FR Doc. 2011–14731 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2011–0039]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on March 28, 2011 (76 FR 17186).

DATES: Comments must be submitted to OMB on or before July 14, 2011.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Officer.

FOR FURTHER INFORMATION CONTACT: Alex Ansley, Recall Management Division (NVS–215), Room W46–412, NHTSA, 1200 New Jersey Ave., Washington, DC 20590. *Telephone:* (202) 493–0481.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation, *see* 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) 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;

(ii) 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;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

Title: Defect and Noncompliance Reporting and Notification.

Type of Request: Extension of a currently approved information collection.

OMB Control Number: 2127–0004.

Affected Public: Businesses or individuals.

Abstract: This notice requests comment on NHTSA's proposed extension to approved collection of information OMB No. 2127–0004. This collection covers the information collection requirements found within various statutory sections in the Motor Vehicle Safety Act of 1966 (Act), 49 U.S.C. 30101, *et seq.,* that address and require manufacturer notifications to NHTSA of safety-related defects and failures to comply with Federal Motor Vehicle Safety Standards (FMVSS) in motor vehicles and motor vehicle equipment, as well as the provision of particular information related to the ensuing owner and dealers notifications and free remedy campaigns that follow those notifications. The sections of the Act imposing these requirements include 49 U.S.C. 30118, 30119, 30120, and 30166. Many of these requirements are implemented through, and addressed with more specificity in, 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports* (Part 573) and 49 CFR 577, *Defect and Noncompliance Notification.*

Pursuant to the Act, motor vehicle and motor vehicle equipment manufacturers are obligated to notify, and then provide various information and documents, to NHTSA in the event a safety defect or noncompliance with Federal Motor Vehicle Safety Standards (FMVSS) is identified in products they

manufactured. *See* 49 U.S.C. 30118(b) and 49 CFR 573.6 (requiring manufacturers to notify NHTSA, and provide certain information, when they learn of a safety defect or noncompliance). Manufacturers are further required to notify owners, purchasers, dealers and distributors about the safety defect or noncompliance. *See* 49 U.S.C. 30118(b), 30120(a), and 49 CFR 577.7, 577.13. They are required to provide to NHTSA copies of communications pertaining to recall campaigns that they issue to owners, purchasers, dealers, and distributors. *See* 49 U.S.C. 30166(f) and 49 CFR 573.6(c)(10).

Manufacturers are also required to file with NHTSA a plan explaining how they intend to reimburse owners and purchasers who paid to have their products remedied before being notified of the safety defect or noncompliance, and explain that plan in the notifications they issue to owners and purchasers about the safety defect or noncompliance. *See* 49 U.S.C. 30120(d) and 49 CFR 573.13. They are further required to keep lists of the respective owners, purchasers, dealers, distributors, lessors, and lessees of the products determined to be defective or noncompliant and involved in a recall campaign, and are required to provide NHTSA with a minimum of six quarterly reports reporting on the progress of their recall campaigns. *See* 49 CFR 573.8 and 573.7, respectively.

The Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns. These requirements relate to the proper disposal of recalled tires, including a requirement that the manufacturer conducting the tire recall submit a plan and provide specific instructions to certain persons (such as dealers and distributors) addressing that disposal, and a requirement that those persons report back to the manufacturer certain deviations from the plan. *See* 49 U.S.C. 30120(d) and 49 CFR 573.6(c)(9). They also require the reporting to NHTSA of intentional and knowing sales or leases of defective or noncompliant tires.

49 U.S.C. 30166(n), and its implementing regulation found at 49 CFR 573.10, mandates that anyone who knowingly and willfully sells or leases for use on a motor vehicle a defective tire or a tire that is not compliant with FMVSS, and with actual knowledge that the tire manufacturer has notified its dealers of the defect or noncompliance as required under the Act, is required to report that sale or lease to NHTSA no more than five working days after the person to whom the tire was sold or leased takes possession of it.

Estimated Burden: This collection has an approved burden of 21,370 hours per year.[1] Our review of recall information since we last requested approval of this collection does not demonstrate that this figure requires adjustment. A summary explanation of how this total annual figure was calculated follows.

There continue to be an average of 650 noncompliance or safety defect notifications to NHTSA filed each year by approximately 175 distinct manufacturers, with an estimated 750 quarterly reports filed per quarter (or 3,000 reports per year). Although the average number of recalls filed per year and the average number of manufacturers filing fluctuates each year, we have not seen, nor expect to see, consistent dramatic changes in these averages.

We continue to estimate that it takes a manufacturer an average of 4 hours to complete each notification report to NHTSA, that it takes another 4 hours to complete each quarterly report, and that maintenance of the required owner, purchaser, dealer and distributors lists requires 8 hours. Accordingly, the subtotal estimate of annual burden hours related to the reporting to NHTSA of a safety defect or noncompliance, completion of quarterly reports on the progress of recall campaigns, and maintenance of owner and purchaser lists is 16,000 hours annually ((650 notices × 4 hours/report) + (3,000 quarterly reports × 4 hours/report) + (175 manufacturers × 8 hours)).

In addition, we continue to estimate an additional 2 hours will be needed to add to a manufacturer's information report details relating to the manufacturer's intended schedule for notifying its dealers and distributors, and tailoring its notifications to dealers and distributors in accordance with the requirements of 49 CFR 577.13. This would total to an estimated 1,300 hours annually (650 notices × 2 hours/report).

In the event a manufacturer supplied the defect or noncompliant product to independent dealers through independent distributors, that manufacturer is required to include in its notifications to those distributors an instruction that the distributors are to then provide copies of the manufacturer's notification of the defect or noncompliance to all known distributors or retail outlets further down the distribution chain within five working days. *See* 49 CFR 577.8(c)(2)(iv). As a practical matter, this requirement would only apply to equipment manufacturers since vehicle manufacturers generally sell and lease vehicles through a dealer network, and not through independent distributors. We continue to believe previous estimates of roughly 90 equipment recalls per year are sound. Although the distributors are not technically under any regulatory requirement to follow that instruction, we expect that they will, and have estimated the burden associated with these notifications (identifying retail outlets, making copies of the manufacturer's notice, and mailing) to be 5 hours per recall campaign. Assuming an average of 3 distributors per equipment item, (which is a liberal estimate given that many equipment manufacturers do not use independent distributors) the total number of burden hours associated with this third party notification burden is approximately 1,350 hours per year (90 recalls × 3 distributors × 5 hours).

As for the burden linked with a manufacturer's preparation of and notification concerning its reimbursement for pre-notification remedies, consistent with previous estimates (*see* 69 FR 11477 (March 10, 2004)), we continue to estimate that preparing a plan for reimbursement takes approximately 8 hours annually, and that an additional 2 hours per year is spent tailoring the plan to particular defect and noncompliance notifications to NHTSA and adding tailored language about the plan to a particular safety recall's owner notification letters. In sum, these required activities add an additional 2,700 annual burden hours ((175 manufacturers × 8 hours) + (650 recalls × 2 hours)).

In summary, the total burden associated with the defect and noncompliant information collection and reporting requirements we continue to estimate at 21,350 hours per year.

As explained earlier, the Act and Part 573 also contain numerous information collection requirements specific to tire recall and remedy campaigns, as well as a statutory and regulatory reporting requirement that anyone that knowingly and intentionally sells or leases a defective or noncompliant tire notify NHTSA of that activity.

Manufacturers are required to include specific information relative to tire disposal in the notifications they provide NHTSA concerning identification of a safety defect or noncompliance with FMVSS in their tires, as well as in the notifications which they issue to their dealers or other tire outlets participating in the

[1] *See* **Federal Register** notices of March 28, 2008 (73 FR 16740) and June 5, 2008 (73 FR 32073) for the analysis and discussion associated with this burden hour estimate.

recall campaign. *See* 49 CFR 573.6(c)(9). We continue to estimate that there will be about 10 tire recall campaigns per year, and that inclusion of this additional information will require an additional two hours of effort beyond the subtotal above associated with non-tire recall campaigns. This additional effort consists of one hour for the NHTSA notification and one hour for the dealer notification for a total of 20 burden hours (10 tire recalls a year × 2 hours per recall).

Manufacturer owned or controlled dealers are required to notify the manufacturer and provide certain information should they deviate from the manufacturer's disposal plan. Consistent with previous analysis, we continue to ascribe zero burden hours to this requirement since to date no such reports have been provided and our original expectation that dealers would comply with manufacturers' plans has proven true.

Accordingly, we estimate 20 burden hours a year will be spent complying with the tire recall campaign requirements found in 49 CFR 573.6(c)(9).

And, as we have yet to receive a single report of a defective or noncompliant tire being intentionally sold or leased in the fourteen years since this rule was proposed, our previous estimate of zero burden hours remains unchanged with this notice.

In summary, our previous estimate of 21,370 total burden hours associated with this approved information collection stands.

Estimated Number of Respondents: NHTSA receives reports of defect or noncompliance from roughly 175 manufacturers per year. Again, this figure fluctuates from year to year, but we do not have a basis at this juncture to suspect this annual figure will change significantly. Accordingly, we estimate that there will continue to be approximately 175 manufacturers per year filing defect or noncompliance reports and completing the other information collection responsibilities associated with those filings.

We discussed above that we have yet to receive a single report filed pursuant to 49 CFR 573.10. This information collection requirement, to reiterate, requires anyone who sells or leases a defective or noncompliant tire, with knowledge of that tire's defectiveness or noncompliance, to report that sale or lease to NHTSA. Given the lack of filing history over many years, we estimate that there will continue to be zero reports filed and therefore zero respondents as to this requirement.

In summary, we estimate that there will be a total of 175 respondents per year associated with OMB No. 2127–0004.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: June 2, 2011.

Frank Borris,

Director, Office of Defects Investigation.

[FR Doc. 2011–14745 Filed 6–13–11; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35530]

Arkansas Midland Railroad Company, Inc., Trackage Rights Exemption; Caddo Valley Railroad Company

Pursuant to a written trackage rights agreement, Caddo Valley Railroad Company (CVR) has agreed to grant local trackage rights to Arkansas Midland Railroad Company, Inc. (AKMD) over approximately 2.57 miles of CVR's rail line, known as the Gurdon Segment, extending between a connection with Union Pacific Railroad Company (UP) at milepost 426.88 in Gurdon, Ark. and milepost 429.5 north of Gurdon.[1]

The earliest this transaction may be consummated is July 7, 2011, the effective date of the exemption (30 days after the exemption was filed), unless otherwise ordered by the Board.[2]

The purpose of the transaction is to allow AKMD to continue to provide rail service on the Gurdon Segment pending transfer of the line to AKMD.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under §§ 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to Docket No. FD 35530, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 920, Chicago, IL 60606.

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov.*''

Decided: June 8, 2011.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–14558 Filed 6–13–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of Three Entities and One Individual Pursuant to Executive Order 13553

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of one individual and three entities newly-designated as persons whose property and interests in property are blocked pursuant to Executive Order 13553 of

[1] AKMD states that the mileposts of the Gurdon Segment are slightly changed in this transaction from those listed in the emergency service proceeding involving the same line. *See Ark. Midland R.R.—Alternative Rail Service—Caddo Valley R.R.,* FD 35416 (STB served Sept. 17, 2010, Oct. 15, 2010, and Feb. 11, 2011). Specifically, the connection with UP at Gurdon is a technical correction of one-hundredth of a mile based on AKMD's physical observation, and at the other end of the segment, the milepost has been shortened to exclude trackage and an attendant grade crossing that was not needed or used for any rail service purpose.

[2] On June 7, 2011, AKMD concurrently filed a petition requesting that the Board allow this trackage rights transaction to become effective on June 15, 2011, the day after AKMD's current emergency service authority expires on the Gurdon Segment, rather than on July 7. That request will be addressed in a separate Board decision.

September 28, 2010, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions.'' The property and interests in property of one of the entities are already blocked pursuant to another OFAC sanctions program.

DATES: The designation by the Director of OFAC of the one individual and three entities identified in this notice, pursuant to Executive Order 13553 of September 28, 2010, is effective June 9, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *Tel.:* 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, Tel.: 202/622–0077.

Background

On September 28, 2010, the President issued Executive Order 13553, ''Blocking Property of Certain Persons With Respect to Serious Human Rights Abuses by the Government of Iran and Taking Certain Other Actions'' (the ''Order'') pursuant to, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–06) and the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (Pub. L. 111–195). In the Order, the President took additional steps with respect to the national emergency declared in Executive Order 12957 of March 15, 1995.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, of persons listed in the Annex to the Order and of persons determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State, to meet any of the criteria set forth in the Order.

The Annex to the Order listed eight individuals whose property and interests in property are blocked pursuant to the Order.

On June 9, 2011, the Director of OFAC, in consultation with or at the recommendation of the Secretary of State, designated, pursuant to one or more of the criteria set forth in subparagraphs (a)(ii)(A) through (a)(ii)(C) of Section 1 of the Order, one individual and three entities as being blocked pursuant to the Order. As noted above and in the listing below, the property and interests in property of one these entities are already blocked pursuant to another OFAC sanctions program. The listing for these persons is as follows:

Individual

MOGHADAM, Ismail Ahmadi (a.k.a. AHMADI–MOGHADDAM, Esma'il; a.k.a. AHMADI–MOQADDAM, Esma'il; a.k.a. MOGHADDAM, Esmaeel Ahmadi; a.k.a. MOGHADDAM, Ismail Ahmadi); DOB 1961; POB Tehran, Iran; Head of Iranian Police; Chief, Iran's Law Enforcement (individual) [IRAN–HR]

Entities

ISLAMIC REVOLUTIONARY GUARD CORPS (a.k.a. AGIR; a.k.a. IRANIAN REVOLUTIONARY GUARD CORPS; a.k.a. IRG; a.k.a. IRGC; a.k.a. ISLAMIC REVOLUTIONARY CORPS; a.k.a. PASDARAN; a.k.a. PASDARAN–E ENGHELAB–E ISLAMI; a.k.a. PASDARAN–E INQILAB; a.k.a. REVOLUTIONARY GUARD; a.k.a. REVOLUTIONARY GUARDS; a.k.a. SEPAH; a.k.a. SEPAH PASDARAN; a.k.a. SEPAH–E PASDARAN–E ENQELAB–E ESLAMI; a.k.a. THE ARMY OF THE GUARDIANS OF THE ISLAMIC REVOLUTION; a.k.a. THE IRANIAN REVOLUTIONARY GUARDS), Tehran, Iran [NPWMD] [IRGC] [IRAN–HR]

BASIJ RESISTANCE FORCE (a.k.a. BASEEJ; a.k.a. BASIJ–E MELLI; a.k.a. MOBILIZATION OF THE OPPRESSED ORGANIZATION; f.k.a. NATIONAL MOBILIZATION ORGANIZATION; f.k.a. SAZMAN BASIJ MELLI; a.k.a. SAZMAN–E MOGHAVEMAT–E BASIJ; f.k.a. VAHED–E BASIJ–E MOSTAZAFEEN; a.k.a. ''NATIONAL RESISTANCE MOBILIZATION''; a.k.a. ''RESISTANCE MOBILIZATION FORCE'') [IRGC] [IRAN–HR]

LAW ENFORCEMENT FORCES OF THE ISLAMIC REPUBLIC OF IRAN (a.k.a. IRANIAN LAW ENFORCEMENT FORCES; a.k.a. IRANIAN POLICE; a.k.a. NAJA; a.k.a. NIRUYIH INTIZAMIYEH JUMHURIYIH ISLAMIYIH IRAN) [IRAN–HR]

Dated: June 9, 2011.

Barbara C. Hammerle,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2011–14713 Filed 6–13–11; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning low-income housing credit for Federally-assisted buildings (sec. 1.42–2(d)).

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Evelyn J. Mack, (202) 622–7381, Internal Revenue Service, Room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Low-Income Housing Credit for Federally-assisted Buildings.

OMB Number: 1545–1005.

Regulation Project Number: TD 8302.

Abstract: The regulation provides state and local housing credit agencies and owners of qualified low-income buildings with guidance regarding compliance with the waiver requirement of section 42(d)(6) of the Internal Revenue Code. The regulation requires documentary evidence of financial distress leading to a potential claim against a Federal mortgage insurance fund in order to get a written waiver from the IRS for the acquirer of the qualified low-income building to properly claim the low-income housing credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions,

and Federal, state, local or Tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14609 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning electing small business trusts.

DATES: Written comments should be received on or before August 15, 2011to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202)622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Electing Small Business Trusts.

OMB Number: 1545–1591.

Regulation Project Number: REG–251701–96 (TD 8894).

Abstract: This regulation provide the rules for an electing small business trust (ESBT), which is a permitted shareholder of an S corporation. With respect to the collections of information, the regulations provide the rules for making an ESBT election, and the rules for converting from a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The regulations allow certain S corporations to reinstate their previous taxable year that was terminated under Sec. 1.444–2T by filing Form 8716.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 7,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14610 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning limitations on net operating loss carry-forwards and certain built-in losses and credit following an ownership change of a consolidated group.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue

Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, Room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group.

OMB Number: 1545–1218.

Regulation Project Number: TD 8824.

Abstract: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 662.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14611 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8924

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests.

OMB Number: 1545–2099.

Form Number: Form 8924.

Abstract: Form 8924, Excise Tax on Certain Transfers of Qualifying Geothermal or Mineral Interests, is required by Section 403 of the Tax Relief and Health Care Act of 2006 which imposes an excise tax on certain transfers of qualifying mineral or geothermal interests.

Current Actions: There are no changes to the form previously approved by OMB. However, we have adjusted the number of estimated annual responses per year, based on more up-to-date figures. This will result in a total burden decrease of 444 hours. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 5 hours 33 minutes.

Estimated Total Annual Burden Hours: 111.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 6, 2008.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14612 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2005–26

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2005–26, Revenue Procedure Regarding Extended Period of Limitation for Listed Transaction Situations.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Revenue Procedure Regarding Extended Period of Limitations for Listed Transaction Situations.

OMB Number: 1545–1940.

Revenue Procedure Number: Revenue Procedure 2005–26.

Abstract: The purpose of this revenue procedure is to alert taxpayers to the enactment of section 6501(c)(10) of the Internal Revenue Code, and to provide guidance for taxpayers subject to the extended period of limitations on assessment under section 6501(c)(10).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and Business or other for-profit institutions.

Estimated Number of Respondents: 859.

Estimated Time per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 430.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14613 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedures 2003–79, 2007–64, and 2006–46

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedures 2003–79, 2007–64, 2006–46, Changes in Periods of Accounting.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedures should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Changes in Periods of Accounting.

OMB Number: 1545–1786.

Revenue Procedure Numbers: Revenue Procedures 2003–79, 2007–64, and 2006–46.

Abstract: Revenue Procedures 2003–79, 2007–64, and 2006–46, provide the comprehensive administrative rules and guidance, for affected taxpayers adopting, changing, or retaining annual accounting periods, for Federal income tax purposes. In order to determine whether a taxpayer has properly adopted, changed to, or retained an annual accounting period, certain information regarding the taxpayer's qualification for and use of the requested annual accounting period is required. The revenue procedures request the information necessary to make that determination when the information is not otherwise available.

Current Actions: There are no changes being made to these revenue procedures at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, individuals, not-for-profit institutions and farms.

Estimated Number of Respondents: 800.

Estimated Average Time per Respondent: 53 minutes.

Estimated Total Annual Burden Hours: 700.

Also, the burden is reflected in the burdens of Forms 1128 and 2553.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 3, 2011.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14615 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8717

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8717, User Fee for Employee Plan Determination Letter Request.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, (202) 622–7381, Internal Revenue Service, room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224 or through the Internet at *Evelyn.J.Mack@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: User Fee for Employee Plan Determination Letter Request.

OMB Number: 1545–1772.

Form Number: 8717.

Abstract: The Omnibus Reconciliation Act of 1990 requires payment of a ''user fee'' with each application for a determination letter. Because of this requirement, the Form 8717 was created to provide filers the means to make payment and indicate the type of request.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organization, and not-for-profit institutions.

Estimated Number of Responses: 100,000.

Estimated Time per Response: 4 Hours 21 minutes.

Estimated Total Annual Burden Hours: 438,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14616 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8810

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8810, Corporate Passive Activity Loss and Credit Limitations.

DATES: Written comments should be received on or before August 15, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Evelyn J. Mack, at (202) 622–7381, or at Internal Revenue Service, Room 6231, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Evelyn.J.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Corporate Passive Activity Loss and Credit Limitations.

OMB Number: 1545–1091.

Form Number: 8810.

Abstract: Under Internal Revenue Code section 469, losses and credits from passive activities, to the extent they exceed passive income (or, in the case of credits, the tax attributable to net passive income), are not allowed. Form 8810 is used by personal service corporations and closely held corporations to figure the passive activity loss and credits allowed and the amount of loss and credit to be reported on their tax return.

Current Actions: There are no changes being made to Form 8810 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 100,000.

Estimated Time per Response: 37 hr., 29 min.

Estimated Total Annual Burden Hours: 3,749,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 2, 2011.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2011–14617 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Renewal Charter and Filing Letters

AGENCY: Internal Revenue Service (IRS); Tax Exempt and Government Entities Division.

ACTION: Notice of renewal charter and filing letters.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–462, a renewal charter has been filed for the IRS Advisory Committee on Tax Exempt and Government Entities (ACT). The renewal charter was filed on une 3, 2011, with the Committee on Finance of the United States Senate, the ommittee on Ways and Means of the U.S. House of Representatives, and the Library of Congress. The renewal charter and copies of these filing letters are attached.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Tax Exempt and Government Entities (ACT), governed by the Federal Advisory Committee Act, Public Law 92–463, is an organized public forum for discussion of relevant employee plans, exempt organizations, tax-exempt bonds, and federal, state, local and Indian tribal government issues between officials of the IRS and representatives of the above communities. The ACT also enables the IRS to receive regular input with respect to the development and implementation of IRS policy concerning these communities. ACT members present the interested public's observations about current or proposed IRS policies, programs and procedures, as well as suggest improvements.

Dated: June 6, 2011.

Roberta B. Zarin,

Designated Federal Official, Tax Exempt and Government Entities Division, Internal Revenue Service.

[FR Doc. 2011–14618 Filed 6–13–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Citizens Coinage Advisory Committee Meeting

ACTION: Notification of Citizens Coinage Advisory Committee June 27, 2011 Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 27, 2011.

Date: June 27, 2011.

Time: 6:30 p.m. to 9 p.m.

Location: Slocum Commons, Campus of Colorado College, 30 East Cache La Poudre, Colorado Springs, CO 80903.

Subject: Review and discussion of the candidate designs for the reverse of the 2012 Native American $1 Coin; discussion of the 2010 Annual Report, including commemorative coin program recommendations for the next five calendar years; and discussion on coin design quality.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: Greg Weinman, Acting United States Mint Liaison to the CCAC; 801 9th Street, NW.; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: June 8, 2011.

Richard A. Peterson,

Acting Director, United States Mint.

[FR Doc. 2011–14651 Filed 6–13–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0545]

Proposed Information Collection (Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death) Activity; Comment Request

AGENCY: Department of Veterans Affairs, Veterans Benefits Administration.

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 for information needed to determine a claimant's entitlement to income based benefits and the amount payable.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 15, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov*. Please refer to ''OMB Control No. 2900–0545'' in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.regulations.gov*.

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: Report of Medical, Legal, and Other Expenses Incident to Recovery for Injury or Death, VA Form 21–8416b.

OMB Control Number: 2900–0545.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 21–8416b to report compensation awarded by another entity or government agency for personal injury or death. Such award is considered as countable income; however, medical, legal or other expenses incident to the injury or death, or incident to the collection or recovery of the compensation may be deducted from the amount awarded or settled. The information collected is used to determine the claimant's eligibility for income based benefits and the rate payable.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,125 hours.

Estimated Average Burden per Respondent: 45 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,500.

Dated: June 9, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–14676 Filed 6–13–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0768]

Proposed Information Collection (Joint Application for Comprehensive Assistance and Support Services for Family Caregivers); 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 determine Veterans and their caregivers' eligibility to participate in the Family Caregivers Program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 15, 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 ''OMB Control No. 2900–0768'' 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 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: Joint Application for Comprehensive Assistance and Support Services for Family Caregivers, VA Form 10–10–10CG.

OMB Control Number: 2900–0768.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–10CG is completed by Veterans who served in Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn or active duty service member undergoing medical discharge to determine their eligibility to receive certain medical, travel, training, and financial benefits under the Caregiver Program. Individuals designated as primary or secondary family caregiver also complete VA Form 10–10CG to determine whether they meet the criteria to serve as caregiver and their eligibility receive stipend and certain benefits under the Caregiver Program.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5,000.

Dated: June 9, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–14677 Filed 6–13–11; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 114 June 14, 2011

Part II

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950
Wyoming Regulatory Program; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

[SATS No WY–038–FOR; Docket ID OSM–2009–0012]

Wyoming Regulatory Program

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

ACTION: Final rule; approval of amendment with certain exceptions.

SUMMARY: We are issuing a final decision on an amendment to the Wyoming regulatory program (the ''Wyoming program'') under the Surface Mining Control and Reclamation Act of 1977 (''SMCRA'' or ''the Act''). Our decision approves in part, disapproves in part and defers in part the amendment. Wyoming proposed to amend Chapters 1, 2, 4, 5, and Appendix A of the Land Quality Division (LQD) Coal Rules and Regulations to address required program amendments and other deficiencies identified by OSMRE, and to improve and clarify rules relating to requirements for vegetation measurements and performance standards. Specifically, the proposed changes clarify baseline vegetation requirements and revegetation reclamation plan requirements, clarify revegetation success standards and codify normal husbandry practices, reorganize and clarify species diversity and shrub density requirements, and revise and add definitions supporting those proposed changes. Wyoming also proposed changes to its rules in Chapters 2, 4, and 5 regarding cultural and historic resources, prime farmland, siltation structures and impoundments, and operator information. Wyoming revised its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency.

DATES: *Effective Date:* June 14, 2011.

FOR FURTHER INFORMATION CONTACT: Jeffrey W. Fleischman, *Telephone:* 307.261.6550, *E-mail address: jfleischman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Background on the Wyoming 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 Wyoming program on November 26, 1980. You can find background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program in the November 26, 1980, **Federal Register** (45 FR 78637). You can also find later actions concerning Wyoming's program and program amendments at 30 CFR 950.12, 950.15, 950.16, and 950.20.

II. Submission of the Proposed Amendment

By letter dated October 15, 2009, Wyoming sent OSMRE a proposed amendment to its approved regulatory program (SATS number: WY–038–FOR, Administrative Record Docket ID No. OSM–2009–0012). Wyoming sent the amendment in response to: Portions of a February 21, 1990, letter that we sent to Wyoming in accordance with 30 CFR 732.17(c); previous OSMRE disapprovals at 30 CFR 950.12(a) (6) and (7); and required program amendments at 30 CFR 950.16(f), (l), (m), (p), and (u). The amendment also includes changes made at Wyoming's own initiative.

We announced receipt of the proposed amendment in the February 9, 2010, **Federal Register** (75 FR 6332). 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 Document ID No. OSM–2009–0012–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on March 11, 2010. We received comments from three Federal agencies and one State agency discussed under ''IV. Summary and Disposition of Comments.''

During our review of the amendment, we identified concerns regarding Wyoming's proposed deletion of its definition for ''surface coal mining and reclamation operations'' at Chapter 1, Section 2 (ct) and the term ''surface'' in Chapters 1, 2, 4 and 5; its proposed deletion of the U.S. Geological Survey topographic map scale requirement at Chapter 2, Section 1 (c); its response to a required program amendment at 30 CFR 950.16(p) concerning fish and wildlife enhancement measures at Chapter 2, Section 5(a) (viii) (A); design precipitation event requirements for siltation structures and impoundments at Chapter 4, Section 2(c) (xii) (D) (II); and, incorrect rule cross-references regarding normal husbandry practices at Chapter 4 Section 2(d) (i) (M) (II). We notified Wyoming of these concerns by letter dated May 21, 2010 (Administrative Record Document ID No. OSM–2009–0012–0006).

We delayed final rulemaking to afford Wyoming the opportunity to submit new material to address the deficiencies. Wyoming responded in a letter dated June 21, 2010, that it could not currently submit formal revisions to the amendment due to the administrative rulemaking requirements for promulgation of revised substantive rules (Administrative Record Document ID No. OSM–2009–0012–0007). Specifically, Wyoming explained that the required changes would be considered substantive in nature and therefore the LQD is required to present the proposed rules to the LQD Advisory Board and then the Wyoming Environmental Quality Council for vetting. Following approval by the Governor, the rules may be submitted to OSMRE for final review. While it could not submit formal changes, Wyoming did submit informal responses to the noted concerns. Therefore, we are proceeding with the final rule **Federal Register** document. Our concerns and Wyoming's responses thereto are explained in detail below.

III. OSMRE's Findings

30 CFR 732.17(h)(10) requires that State program amendments meet the criteria for approval of State programs set forth in 30 CFR 732.15, including that the State's laws and regulations are in accordance with the provisions of the Act and consistent with the requirements of 30 CFR Part 700. In 30 CFR 730.5, OSMRE defines ''consistent with'' and ''in accordance with'' to mean (a) with regard to SMCRA, the State laws and regulations are no less stringent than, meet the minimum requirements of, and include all applicable provisions of the Act and (b) with regard to the Federal regulations, the State laws and regulations are no less effective than the Federal

regulations in meeting the requirements of SMCRA.

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 with certain exceptions as described below.

A. Purpose and History of Wyoming's Amendment Regarding Appendix A

Appendix A of the LQD Coal Rules and Regulations contains rules on vegetation sampling methods and reclamation success standards for shrubs on reclaimed lands. Appendix A was previously incorporated by reference in Chapters 2 and 4 of the LQD Coal Rules and Regulations and was approved by OSMRE in a November 24, 1986, **Federal Register** notice (51 FR 42212). However, on August 30, 2006, OSMRE published new revegetation success standards that no longer required sampling and statistical methods to be included in the rules of the regulatory authority (*See* 71 FR 51684). Consequently, much of Appendix A was no longer required to be in the rule and Wyoming proposed to delete Appendix A entirely and relocate portions thereof into Chapters 1, 2, and 4. Specifically, Wyoming's proposed changes to Chapter 1 contain definitions that were relocated from deleted Appendix A, plus new and revised definitions intended to clarify current or proposed rules and/or sampling methods in support of proposed changes in Chapters 2 and 4. Wyoming also proposed to substantially reorganize the structure of Chapter 2 to revise Section 1 (General Requirements) and divide Section 2 (Application Content Requirements) into five new sections including Adjudication Requirements; Vegetation Baseline Requirements; General Baseline Requirements; Mine Plan; and, Reclamation Plan. Similarly, Wyoming proposed to substantially reorganize the structure of Chapter 4 Section 2(d) into two new subsections with subsection (i) containing General Revegetation Performance Standards and most of the current Section 2(d) rules, and adding rules dealing with normal husbandry practices. Subsection (ii) contains Revegetation Success Standards listed by post-mine land use categories. Wyoming also proposed to combine the standards for grazingland and pastureland into a single section and proposes new Chapter 4 Appendix 4A, Evaluation of Shrub Density, which describes the different shrub standard options and is relocated from deleted Appendix A. Lastly, Wyoming indicates in its ''Statement of Principal Reasons for Adoption'' (SOPR) that rules for sampling and statistical methods that had previously been developed for inclusion into Chapter 4 will now be incorporated into the Administrator's Approved Sampling and Statistical Methods document.

B. Minor Wording, Editorial, Punctuation, Grammatical, and Recodification Changes to Previously Approved Regulations

Wyoming proposed minor wording, editorial, punctuation, grammatical, and recodification changes to previously approved rules. The proposed changes are intended to simplify references to applicable rules and reduce unnecessary, outdated, and duplicative language. No substantive changes to the text of these regulations were proposed. Because the proposed revisions to these previously approved rules are minor in nature and do not change any fundamental requirements or weaken Wyoming's authority to enforce them, we are approving the changes and find that they are no less effective than the Federal regulations at Title 30 (Mineral Resources), Chapter VII (Office of Surface Mining Reclamation and Enforcement, Department of the Interior), Parts 700 through 887.

Chapter 1, Section 2(f); deletion of ''Animal unit'' definition because it is no longer used in the rules;

Chapter 1, Section 2(j) through (q); recodification of definitions;

Chapter 1, Section 2(s); deletion of ''Complete application'' definition as it is already defined in Wyoming's statutes;

Chapter 1, Section 2(by)(i), (iii)–(xi); minor punctuation and grammatical changes;

Chapter 1, Section 2(eb)(i)–(iv); minor formatting and grammatical changes;

Chapter 1, Section 2(ed); minor grammatical changes;

Chapter 2, Section 1(c)(iii) and (iv); minor grammatical changes;

Chapter 2, Section 1(c)(v); reference to new rule documenting time frames and bond release standards defined in Chapter 1(dm);

Chapter 2, Section 2; title change to ''Adjudication Requirements'' to reflect reorganization of the chapter;

Chapter 2, Sections 3–6; recodification of existing Section 2 to reflect reorganization and expansion to new sections 3 through 6;

Chapter 2, Section 2(a)(i)(C), (D), (E), and (iv); minor grammatical and punctuation changes;

Chapter 2, Section 2(a)(v)(A)(I)(2.) and (III); minor grammatical changes;

Chapter 2, Section 2(a)(vi)(C) and (C)(I); deletion of current subsections and relocation of rule language throughout reorganized Chapter 2 where appropriate.

Chapter 2, Section 2(b)(vii); deletion of existing rule language as being duplicative due to reorganization and is covered in new Section 6(b)(iii).

Chapter 2, Section 3(l); minor grammatical change;

Chapter 2, Section 4; new section entitled ''Other Baseline Requirements'' to reflect reorganization of the Chapter;

Chapter 2, Section 4(a)(i); reference to land uses and vegetation communities that comprise them as defined in Chapter 1;

Chapter 2, Section 4(a)(v)(A); change ''Soil Conservation Service'' to ''Natural Resource Conservation Service;''

Chapter 2, Section 4(a)(xiv); recodification of cross-reference;

Chapter 2, Section 5(a)(ii); deletion of existing rule language as being duplicative as it is covered in greater detail elsewhere in the section.

Chapter 2, Section 5(a)(ix)(E); recodification of cross-reference;

Chapter 2, Section 6(a), (b), and (b)(iii)(A); minor grammatical changes;

Chapter 4, Section 2; recodification of existing Section 2(d) to reflect reorganization and expansion to new subsections (i) and (ii);

Chapter 4, Section 2(d)(i)(C); minor grammatical change;

Chapter 4, Section 2(d)(i)(E); minor grammatical change;

Chapter 4, Section 2(d)(i)(J); minor grammatical change and recodification of cross-reference;

Chapter 4, Section 2(d)(i)(K); minor grammatical change;

Chapter 4, Section 2(g)(vi); minor grammatical change;

Chapter 4, Section 2(g)(v); minor grammatical change;

Chapter 4, Section 2(i); recodification of cross-reference;

Chapter 4, Section 2(j)(vii)(B); recodification of cross-reference;

Chapter 4, Appendix 4A Introduction; minor change referencing the recodified and revised definition of ''eligible lands.''

C. Revisions to Wyoming's Rules That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

Wyoming proposes revisions to the following rules containing language that is the same as or similar to the corresponding sections of the Federal regulations and/or SMCRA. Therefore we are approving them.

Chapter 1, Section 2(cm); definition of ''Noxious weed'' [30 CFR 701.5];

Chapter 4, Section 2(d)(i)(I); Tree density and replacement [30 CFR 816/817.116(b)(3)(ii)];

Chapter 4, Section 2(g)(iv)(L); Impoundment spillways [30 CFR 816/817.49(a)(9)(i)];

Chapter 4, Section 2(g)(iv)(M); Temporary impoundments [30 CFR 816/817.49(c)(2)];

Chapter 4, Section 2(g)(v)(A); Design precipitation event criteria [30 CFR 816/817.49(a)(9)(ii)(B)];

Chapter 4, Section 2(g)(v)(B); Design precipitation event criteria [30 CFR 816/817.84(b)(2)];

D. Reorganization/Relocation of Existing Provisions and Previously Approved Language in Wyoming's Rules

1. Wyoming proposes to relocate both existing definitions in Chapter 1 as well as previously approved definitions in Appendix A to Chapter 1. The changes are intended to reorganize and/or relocate already existing and approved language to a more appropriate place within the regulations and clarify language contained in the current rules. Because the relocation of previously approved definitions within the regulations does not change any fundamental requirements or weaken Wyoming's authority to enforce them, we are approving the following proposed changes.

Chapter 1, Section 2(r); deletion of ''Comparison area'' definition and relocated as a subcategory under new definition for ''Reference area;''

Chapter 1, Section 2(t); deletion of ''Control area'' definition and relocated as a subcategory under new definition for ''Reference area;''

Chapter 1, Section 2(af); relocation of existing definition of ''Density'' from Appendix A Glossary;

Chapter 1, Section 2(ba); relocation of existing definition of ''Full Shrub'' from Appendix A Glossary;

Chapter 1, Section 2(ct); relocation of existing definition of ''Plotless sampling'' from Appendix A Glossary.

2. Wyoming proposes to substantially reorganize the structure of Chapter 2 by revising Section 1 (General Requirements) and dividing current Section 2 (Application Content Requirements) into the five new sections. Wyoming proposed minor revisions to Sections 1, 2, 4, and 5 all which are approved in Section B. above.

Wyoming also proposes to create new Section 6 entitled ''Reclamation Plan'' by reorganizing rules currently found in Chapter 2 and consolidating both existing revegetation requirements and revised text from Chapter 4 and Appendix A. The reorganized provisions contain concepts and rule language that was previously approved by OSMRE. Wyoming notes in its SOPR that some of the language in the relocated Appendix A rules has been revised to be technically current. In addition, Wyoming explains that a few of the rules currently in Chapter 4 Section 2(d) were moved to Chapter 2 so that all of the rules regarding the reclamation plan are located together. Wyoming further indicates in its SOPR that in most cases, the relocated rules have been reworded and/or restructured to clarify their intent and better fit the rules format. The revised rules in newly-created Section 6 are intended to provide clarity and consistency regarding reclamation plan requirements, as well as maintain organizational continuity. Wyoming's relocation and inclusion of already existing and approved language to a more appropriate place within the regulations, along with its proposed revisions to these previously approved rules, do not change any fundamental requirements or weaken Wyoming's authority to enforce them. Accordingly, we are approving the proposed changes and find that they are consistent with and no less effective than the basic Federal requirements of 30 CFR 780.18(b)(5).

Chapter 2, Section 6(b)(iii)(B) and (C); (existing rule language of Chapter 2, Section 2(b)(iv)(C) has been divided into two new subsections and revised to clarify language in the current rules and fit the new format);

Chapter 2, Section 6(b)(iii)(D); Requirements for tree species in reclamation plan (relocated from Chapter 4, Section 2(d)(x)(F));

Chapter 2, Section 6(b)(iii)(E); Requirements for seed mixtures (relocated with revision from Appendix A, Section VII.B.);

Chapter 2, Section 6(b)(iii)(E)(I)–(IV); Species of vegetation described in the reclamation plan and seeding rates (relocated with revision from Chapter 4, Section 2(d)(v));

Chapter 2, Section 6(b)(iii)(E)(V)(1.)–(5.); Requirements for introduced species seed mixtures (relocated with revision from Appendix A, Section VII.B. and Chapter 4, Section 2(d)(vi));

Chapter 2, Section 6(b)(iii)(E)(VI); Requirement to document suitability of introduced species (relocated with revision from Chapter 4, Section 2(d)(vi));

Chapter 2, Section 6(b)(iii)(E)(VII); Seed mix requirements for grazingland (relocated with revision from Appendix A, Section VII.B.5.);

Chapter 2, Section 6(b)(iii)(E)(IX); Postmining locations of seed mixes (relocated with revision from Appendix A, Section VII.B.);

Chapter 2, Section 6(b)(iii)(F); Operator requests to not use mulch (relocated from Appendix A, Section VII.C.);

Chapter 2, Section 6(b)(iii)(H); Irrigation plans (relocated from Chapter 4, Section 2(d)(xii));

Chapter 2, Section 6(b)(iii)(I); Pest and disease control measures (revision of current Chapter 2, Section 2(b)(vii)(A) to maintain organizational consistency);

Chapter 2, Section 6(b)(iii)(J); Monitoring plan for permanent revegetation (relocated from current Chapter 2, Section 2(b)(vii)(C));

Chapter 2, Section 6(b)(iv); Plan to measure revegetation success (revision of current Chapter 2, Section 2(b)(vii)(B) to maintain organizational consistency);

Chapter 2, Section 6(b)(iv)(A), (B), (D), (E), and (F); Reclamation plan requirements for measuring revegetation success (relocated with revision from Appendix A, Section VIII.F.);

Chapter 2, Section 6(b)(iv)(C); Reclamation plan requirements for measuring revegetation success (inclusion of previously approved shrub goal standard);

Chapter 2, Section 6(b)(iv)(G); Reforestation for commercial harvest success standards (relocated from Chapter 4, Section 2(d)(x)(G)).

3. Wyoming proposes to substantially reorganize the structure of Chapter 4 Section 2(d) into two new subsections. New subsection (i) contains General Revegetation Performance Standards and most of the current Section 2(d) rules, and adds rules dealing with normal husbandry practices. Wyoming explains that a few of the rules currently in Chapter 4 Section 2(d) were moved to Chapter 2 so that all of the rules regarding the reclamation plan are located together. Other rules with performance standards for Revegetation Success listed by post-mine land use categories were moved to new subsection (ii) and are addressed in Finding No. III.E.15. below.

Wyoming also indicates in its SOPR that in several instances, the relocated rules have been reworded for purposes of consistent terminology usage and restructured to clarify their intent and better fit the rules format. The revised rules in newly-created subsection (i) are intended to provide clarity and consistency regarding revegetation performance standards, and maintain organizational continuity. Wyoming's relocation of already existing and approved language to a more appropriate place within the regulations, along with its proposed revisions to these previously approved rules, do not change any fundamental requirements or weaken Wyoming's authority to enforce them. Accordingly, we are approving the proposed changes

and find that they are consistent with and no less effective than the basic Federal requirements of 30 CFR 816/817.111.

Chapter 4, Section 2(d)(i)(F); Rills and gullies (relocated from Chapter 4, Section 2(d)(v));

Chapter 4, Section 2(d)(i)(L); existing rule language has been revised to clarify noxious weed control responsibility by the operator;

Chapter 4, Section 2(d)(v) and (vi); deleted and relocated with revision to Chapter 2, Section 6(b)(iii)(E);

Chapter 4, Section 2(d)(vii); deleted and relocated with revision to Chapter 4, Section 2(d)(ii) and divided into Section 2(d)(ii)(C) for ''cropland'' and (F) for ''industrial, commercial, and residential land uses;''

Chapter 4, Section 2(d)(viii); deleted and relocated to Chapter 4, Section 2(d)(ii)(J)(I) under ''special success standards;''

Chapter 4, Section 2(d)(i)(H); Bond release and revegetation (first sentence relocated from Chapter 4, Section 2(d)(x));

Chapter 4, Section 2(d)(x); deleted and relocated with revision to Chapter 4, Section 2(d)(ii)(B)(I) under ''Revegetation Success Standards for Grazingland and Pastureland;''

Chapter 4, Section 2(d)(x)(A)–(D); deleted and relocated with revision to Chapter 1, Section 2(dl) ''Reference Area'' definitions;

Chapter 4, Section 2(d)(x)(E) and (E)(I)–(E)(IV); deleted and relocated with revision to Chapter 4, Section 2(d)(ii)(B)(II) under shrub replacement requirements for grazingland;

Chapter 4, Section 2(d)(x)(G); Standards for success of reforestation (deleted; first and last sentences relocated with revision to Chapter 4, Section 2(d)(ii)(H), with remainder moved to Chapter 2, Section 6(b)(iv)(G));

Chapter 4, Section 2(d)(x)(H); deleted and relocated with revision to Chapter 4, Section 2(d)(ii)(C)(I) under cropland success standards;

Chapter 4, Section 2(d)(x)(I); deleted and relocated with revision to Chapter 4, Section 2(d)(ii)(C)(II) under cropland success standards;

Chapter 4, Section 2(d)(x)(J); deleted and relocated with revision to Chapter 4, Section 2(d)(ii)(B)(I)(3.) under cropland success standards;

Chapter 4, Section 2(d)(xii); Irrigation plans deleted and relocated with revision to Chapter 2, Section 6(b)(iii)(H).

4. Wyoming proposes new Chapter 4 Appendix 4A, Evaluation of Shrub Density, which describes the different shrub standard options and is relocated from deleted Appendix A. Wyoming's relocation of already existing and previously approved language to a more appropriate place within the regulations does not change any fundamental requirements or weaken Wyoming's authority to enforce them. Accordingly, we are approving the proposed change.

E. Revisions to Wyoming's Rules That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Chapter 1, Section 2(j); Definition of ''Augmented Seeding''

Wyoming proposes to add a new definition for ''Augmented Seeding'' to its rules at Chapter 1, Section 2(j) that reads as follows:

(j) ''Augmented Seeding'' means reseeding in response to the unsuccessful germination, establishment or permanence of revegetation efforts. Augmented seeding resets the applicable liability period. A synonym is reseeding.

In its SOPR, Wyoming states that this definition is needed to support its proposed normal husbandry rules [Chapter 4, Section 2(d)(i)(M)(I)], and was required by OSM to address the difference between interseeding, which is a husbandry practice that does not reset the bond clock, and augmented seeding which does reset the bond clock. Wyoming continues that the difference between the two is that augmented seeding is used when the original seeding has been unsuccessful, and that interseeding is used to enhance established vegetation in order to improve composition.

The proposed definition appropriately distinguishes the differences between augmented seeding and interseeding, and is consistent with other state definitions and uses previously approved by OSMRE. We also find that while there is no direct Federal counterpart to the proposed rule it implements the Federal requirements at 30 CFR 816/817.116(c)(1) and (4), and is no less effective than the Federal regulations. Accordingly, we are approving Wyoming's proposed definition.

2. Chapter 1, Section 2(am); Definition of ''Eligible Land''

Wyoming proposes to revise its definition for ''Eligible land'' in its rules at Chapter 1, Section 2(am) to read as follows:

(am) ''Eligible land'' means all land to be affected by a mining operation after August 6, 1996 which carries the grazingland land use designation and all affected pastureland land use units which have a full shrub density greater than one full shrub per square meter. Pastureland is eligible only if the surface owner requests that the pastureland be eligible and only if the land units are included in a new permit or permit amendment application which is submitted to the Administrator after approval of this rule by the Office of Surface Mining.

Wyoming states in its SOPR that grazingland, including land with pre-mining shrub densities of less than one shrub per square meter, functions as wildlife habitat and is eligible for shrub reclamation. Wyoming continues that pastureland, with its primary use as domestic livestock grazing and haying, often has a significant enough shrub component that it also functions as wildlife habitat. Thus, the Pastureland shrubs may be replaced on other reclaimed land such as grazingland.

Next, Wyoming states that the revision adds pastureland with a full shrub density greater than one shrub per square meter as eligible land. Wyoming goes on to explain that this means the areas defined as pastureland are required to meet the shrub density standard if their pre-mine shrub densities are greater than one full shrub per square meter. Conversely, pasturelands with lower pre-mine shrub densities are not required to replace shrubs postmine.

Wyoming also notes that the definition is being revised to make pastureland ''eligible land'' only if the surface owner requests that pastureland be eligible. Originally, the proposed rule made pastureland subject to shrub replacement when full shrub density was greater than one shrub per square meter. Wyoming confirms that meeting this standard is still required, but only with surface owner consent. Wyoming also explains that the concept of surface owner consent was added as a result of public comment and testimony during a Wyoming Environmental Quality Council hearing on these rules. Wyoming concludes by stating that this adds the option of replacing shrubs on pastureland with a shrub density of greater than one shrub per square meter if the owner of the land requests that pastureland be eligible land.

The Federal regulations at 30 CFR 816/817.116(b)(1) require that for areas developed for use as grazing land or pasture land, the ground cover and production for living plants shall be at least equal to that of a reference area or such other [revegetation] success standards approved by the regulatory authority. Wyoming's proposed definition for ''Eligible land'' adds specificity beyond that contained in the Federal regulations. We also find that while there is no direct Federal counterpart to the proposed rule, it implements the Federal requirement at 30 CFR 816/817.116(b)(1) and is no less effective than the Federal regulations.

Accordingly, we are approving Wyoming's revised definition.

3. Chapter 1, Section 2(bm); Definition of ''Husbandry Practice''

Wyoming proposes to add a new definition for ''Husbandry practice'' to its rules at Chapter 1, Section 2(bm) that reads as follows:

(bm) ''Husbandry practice'' means when preceded by the word ''normal'', those management practices that may be used to achieve revegetation success without restarting the bond responsibility period. Normal husbandry practices are sound management techniques which are commonly practiced on native lands in the area of the mine and, if discontinued after the area is bond released, shall not reduce the probability of permanent vegetation success.

Wyoming states that a definition of ''Husbandry practice'' is needed to support its proposed normal husbandry rules [Chapter 4, Section 2(d)(i)(M)], and explains that the new definition includes elements from the current ''Good husbandry practices'' definition at Chapter 1, Section 2(ao) that is proposed for deletion. Specifically, the second sentence of the proposed definition was moved from the current definition of ''Good husbandry practices'' in response to public comments. Wyoming also points out that the specific list of acceptable normal husbandry practices and their limitations, which are enforceable, are included in Chapter 4, Section 2(d)(i)(M).

The Federal regulations at 30 CFR 816/817.116(b) state, in pertinent part, that ''Standards for [revegetation] success shall be applied in accordance with the approved postmining land use * * *.''

The Federal regulations at 30 CFR 816.116(c)(1) require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) state, in pertinent part, that management practices are normal husbandry practices ''if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success.''

We are approving Wyoming's proposed definition of ''Husbandry practice,'' with the understanding that it be interpreted as achieving successful revegetation through ''normal husbandry practices'' in accordance with the approved postmining land use. We also find, based on the above understanding, that while there is no direct Federal counterpart definition to the proposed rule, it implements the Federal requirements at 30 CFR 816/817.116(b) and (c)(4) and is no less effective than the Federal regulations.

Wyoming also proposes to delete its current definition of ''Good husbandry practices'' at Chapter 1, Section 2(ao) as being unnecessary and redundant because the proposed addition of the term ''normal'' has been included in the new definition for ''Husbandry practice.'' For the same reasons explained above, we approve the proposed deletion.

4. Chapter 1, Section 2(bu); Definition of ''Interseed''

Wyoming proposes to add a new definition for ''Interseed'' to its rules at Chapter 1, Section 2(bu) that reads as follows:

(bu) ''Interseed'' means a secondary seeding into established vegetation in order to improve composition, diversity or seasonality. Interseeding is done to enhance revegetation rather than to augment the revegetation that is unsuccessful in terms of germination, establishment, or permanence.

Similar to Finding No. III.E.1. above for ''Augmented seeding,'' Wyoming states that a definition of ''Interseeding'' is needed to support its proposed normal husbandry rules [Chapter 4, Section 2(d)(i)(M)(I)], and distinguish it from augmented seeding which restarts the bond responsibility period. OSMRE has previously approved the use of interseeding as a normal husbandry practice in both Colorado and New Mexico using similar language.

We find that Wyoming's proposed definition provides specificity beyond that contained in the Federal regulations, appropriately distinguishes the differences between augmented seeding and interseeding, and is consistent with other state definitions and uses previously approved by OSMRE. We also find that while there is no direct Federal counterpart to the proposed rule it implements the Federal requirements at 30 CFR 816/817.116(c)(1) and (4), and is no less effective than the Federal regulations. Accordingly, we are approving Wyoming's proposed definition.

5. Chapter 1, Section 2(by)(ii); Definition of ''Pastureland''

Wyoming proposes to revise its definition for ''Pastureland'' in its rules at Chapter 1, Section 2(by)(ii) to read as follows:

(ii) ''Pastureland'' means land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed. In addition, for the purpose of determining premining land use, the relative cover of introduced perennial forage species must be greater than 40% of the relative cover of total vegetation in order for the land to be pastureland. If the full shrub density is greater than one shrub per square meter on those lands and the surface owner requests the lands to be eligible, the land use is still pastureland but the land is also ''eligible land'' in terms of shrub reclamation.

Wyoming explains that the revised definition of pastureland is intended to identify land that has been altered in the past to better suit domestic grazing and haying purposes. Wyoming further states that it is recognized that many pasturelands have, since initial treatment, reverted back to a more native vegetation composition, including shrubs, which now also provide functional wildlife habitat as a pre-mining land use. Thus, the distinction between pastureland and grazingland needs to be clear. Wyoming notes that the rule identifies the vegetative composition, including native forage and shrubs, that would distinguish treated lands as either pastureland or grazingland, and that since it is possible for land to be defined as pastureland and still have a functional shrub habitat component, the definition also identifies when pastureland is eligible for shrub reclamation. Lastly, Wyoming states that surface owner consent is required in addition to the requirement that shrub density be greater than one shrub per square meter for lands to become eligible lands. The surface owner consent requirement was added as a result of public comment and testimony during a Wyoming Environmental Quality Council rulemaking hearing.

Wyoming's proposed revision specifies the amount of relative cover required of pastureland species in order for the vegetation community to be considered pastureland. The revision also specifies when pre-mine plant communities qualify as pastureland, and when pastureland is required (eligible) to meet the shrub density standard. We find that Wyoming's revised definition for pastureland adds specificity beyond that contained in the Federal definition and is no less effective than the counterpart Federal Regulation at 30 CFR 701.5. Accordingly, we are approving Wyoming's revised definition.

6. Chapter 1, Section 2(ct); Definition ''Surface Coal Mining and Reclamation Operations'' and deletion of the Term ''Surface'' in Chapters 1, 2, 4, and 5

Wyoming proposes to delete the definition of ''surface coal mining and reclamation operations'' at Chapter 1, Section 2(ct), as well as the word ''surface'' throughout its rules in Chapters 1, 2, 4, and 5, respectively. Wyoming states that both the definition and term are being deleted because they are holdovers from when the coal and non-coal rules were combined. Wyoming also notes in its SOPR that deletion of the word ''surface'' is necessary to eliminate potential confusion for underground coal operations because the same requirements apply for both surface and underground mines. At OSMRE's request, Wyoming provided additional justification for deleting its regulatory definition of ''surface coal mining and reclamation operations'' by explaining that similar definitions are included in its statutes for ''Surface coal mining operation'' at 35–11–103(e)(xx) and ''Reclamation'' at 35–11–103(e)(i). Wyoming concluded by noting that if the statute and regulation conflict, the statute would supersede the regulation; therefore redundant or duplicative regulations are removed when possible (Administrative Record Document ID No. OSM–2009–0012–0010).

OSMRE replied in a letter dated May 21, 2010, that Wyoming's regulatory definition of ''surface coal mining and reclamation operations,'' which was approved in its November 26, 1980, original program approval, is substantively identical to the Federal definitions found at Section 701(27) of SMCRA and 30 CFR 700.5. Additionally, Wyoming's statutory definition of ''surface coal mining operation,'' as approved by OSMRE on March 31, 1980, is substantively identical to the Federal definitions found at Section 701(28) of SMCRA and 30 CFR 700.5. Consequently, we determined that, like their Federal counterparts, Wyoming's definitions of ''surface coal mining and reclamation operations'' and ''surface coal mining operation'' are companion requirements that complement one another and do not conflict. We also informed Wyoming that its proposed deletions would result in continued use of the undefined terms ''coal mining and reclamation operations'' and ''coal mining operations'' throughout its rules. Therefore, in lieu of removing the definition of ''surface coal mining and reclamation operations'' we required that Wyoming propose definitions for ''coal mining operations'' and ''coal mining and reclamation operations'' that are consistent with and no less effective than the requirements of Federal counterpart definitions found at 30 CFR 700.5. In the absence of such definitions, we concluded that Wyoming's proposed deletions are less stringent than SMCRA and inconsistent with and less effective than the corresponding Federal regulations.

Wyoming responded in a letter dated June 21, 2010, by stating its agreement with OSMRE that removal of the definition ''surface coal mining and reclamation operations'' and the term ''surface'' throughout Chapters 1, 2, 4, and 5 ''would result in Wyoming's continued use of the undefined terms.'' As a result, Wyoming replied that it will review the formally submitted rules for instances where the term ''surface'' was removed and reinsert that language as originally approved. Wyoming also stated that it would place the definition of ''surface coal mining and reclamation operations'' back in Chapter 1 as originally defined as part of its future Advisory Board rulemaking efforts.

Based on the discussion above, we are not approving Wyoming's proposed rule changes deleting the definition of ''surface coal mining and reclamation operations'' at Chapter 1, Section 2(ct), and removing the term ''surface'' throughout its rules in Chapters 1, 2, 4 and 5. We also acknowledge Wyoming's commitment to reinstate the proposed deletions in a future rulemaking effort and are deferring our decision on them until such time as they are formally submitted to OSMRE for review.

7. Chapter 1, Section 2(dl); Definition of ''Reference Area'' and Subcategories ''Comparison Area,'' ''Control Area,'' ''Extended Reference Area,'' and ''Limited Reference Area''

Wyoming proposes to revise its definition for ''Reference area'' in its rules at Chapter 1, Section 2(dl) to read as follows:

(dl) ''Reference area'' means a land unit established to evaluate revegetation success. A ''Reference area'' is representative of a vegetation community or communities that will be affected by mining activities, in terms of physiography, soils, vegetation and land use history. The ''Reference area'' and its corresponding postmine vegetation community (or communities) must be approved by LQD and shall be defined in the approved Reclamation Plan. All ''Reference areas'' shall be managed to not cause significant changes in the vegetation parameters which will be used to evaluate Chapter 4 revegetation success performance standards. A ''Reference area'' can be a ''Comparison area'', ''Control area'', ''Extended reference area'', or ''Limited reference area'', depending on how it is established and used, in accordance with the following provisions:

Wyoming states in its SOPR that ''Reference area'' is now defined as a general umbrella term for all types of areas used for measuring revegetation success. These include the current revised definitions for ''comparison area,'' ''control area,'' ''extended reference area,'' and a newly-proposed definition for ''limited reference area,'' all of which are defined as subcategories under the reference area category. Wyoming explains that this allows ''reference area'' to serve as a generic term referring to all categories, which will facilitate clarity in rules and communication with the public and operators. Wyoming also notes that it combined the current revised and newly-proposed rules for ''reference areas'' from Appendix A, and Chapters 1, 2, and 4 and placed them in Chapter 1 under the definitions noted below to make it easier to compare them.

(i) ''Comparison area'' means a type of ''Reference area'' that is established after a vegetation community has been affected. A qualitative determination shall be used to evaluate if the proposed ''Comparison area'' adequately represents the affected vegetation community. A ''Comparison area'' may be used when other types of ''Reference areas'' are not available for measuring revegetation success or when other types of ''Reference areas'' will not be representative of revegetation success. ''Comparison areas'' shall be approved by the Administrator prior to their establishment. When evaluating Chapter 4 revegetation success performance standards, data from the ''Comparison areas'' are directly compared by statistical procedures to data from the reclaimed area.

(ii) ''Control area'' means a type of ''Reference area'' that is established during baseline sampling. Quantitative comparisons of vegetation cover, total ground cover, and production between the proposed ''Control area'' and the vegetation community to be affected are used to demonstrate the representative nature of the ''Control area''. When evaluating revegetation success, baseline data are climatically adjusted using equations. These adjusted data are directly compared by statistical procedures to vegetation data from the reclaimed area. The Administrator may determine to make a direct comparison without the climatic adjustment between the ''Control area'' and the reclaimed area. Each ''Control area'' shall be at least two acres.

Wyoming explains in its SOPR that ''Control areas'' have been deemed not the best technology because of their small size and will not be allowed for new permitted lands. However, mines that have ''Control areas'' currently approved will be allowed to continue to use them on currently permitted lands but will not be allowed to use ''Control

areas'' on lands amended into the permit after the effective date of these rules as per new rule Chapter 4, Sec. 2(d)(ii)(A)(I)(1). Wyoming also clarifies that the two acre size remains because these areas were selected under the current rules which require two acres.

(iii) ''Extended reference area'' means a type of a ''Reference area'' that includes a major portion of one or more premine vegetation communities within the permit area. During baseline sampling, the ''Extended reference area'' includes areas proposed to be affected and areas that will be unaffected. Postmine, the unaffected areas constitute the ''Reference area'' for revegetation success evaluation. ''Extended reference areas'' should be established during baseline sampling, but in some circumstances, may be established after mining begins. The representative nature of the vegetation community within the ''Extended reference area'' is demonstrated by vegetation community mapping procedures, sampling data, soil data, physiography and land use history. To evaluate revegetation success, data from the ''Extended reference area'' are directly compared by the statistical procedures to data from the reclaimed area. Each ''Extended reference area'' will be as large as possible.

(iv) ''Limited reference area'' is one type of a ''Reference area'' that is established during baseline sampling to represent one vegetation community to be reestablished. The representative nature of the ''Limited reference area'' is determined by quantitative comparisons of vegetation cover, and production between the ''Limited reference area'' and proposed affected areas at the 90 percent confidence level. To evaluate revegetation success, data from the ''Limited reference area'' are directly compared by statistical procedures to data from the reclaimed area. Each ''Limited reference area'' shall be at least five acres.

In order to alleviate the potential for confusion OSMRE notes that, with respect to vegetation, the term ''established'' generally infers the seeding, germination, and successful independent propagation of vegetation. Thus, we interpret the term ''established'' in Wyoming's proposed rules to mean those areas ''designated,'' ''delineated,'' and/or ''identified'' as meeting a ''Reference area'' standard.

Additionally, we interpret the five acre requirement for ''Limited Reference Areas'' to be a minimum requirement even if a valid statistical analysis indicates the validity of a smaller sized area; a minimum five acre requirement will help buffer the reference area from such things as edge and other effects.

The Federal definition of ''Reference area'' is found at 30 CFR 701.5 and reads as follows:

Reference area means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Regulatory authority. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

Wyoming's proposed definition for ''Reference area'' adds specificity beyond that contained in the Federal regulations. We also find that while there are no direct Federal counterparts to the proposed subcategory definitions for ''comparison area,'' ''control area,'' ''extended reference area,'' and ''limited reference area,'' they implement the Federal requirements at 30 CFR 816/817.116 and are no less effective than the Federal regulations. Accordingly, we are approving both Wyoming's revised and proposed definitions with the understanding that they be interpreted as explained above.

8. Chapter 2, Section 1(c); U.S. Geological Survey Topographic Map Scale Requirement

Wyoming proposes to delete the requirement that maps the equivalent of a U.S. Geological Survey topographic map submitted with a permit application be no smaller than a scale of 1:24,000. In its SOPR, Wyoming states that ''the reference to a particular scale has been removed from rule and will be placed in a guideline. This will allow maximum flexibility to allow the scale be appropriate for the size of the mine or item depicted. The scale will still have to be acceptable to the Administrator to ensure its usefulness to the division.''

By letter dated May 21, 2010, OSMRE responded that Section 507(b)(13)(B) of SMCRA requires, in pertinent part, that:

permit applications shall be submitted in a manner satisfactory to the regulatory authority and shall contain, among other things, accurate maps to an appropriate scale clearly showing * * * all types of information set forth on topographic maps of the United States Geological Survey of a scale of 1:24,000 or 1:125,000 or larger, * * *.

In addition, we stated that the counterpart Federal regulations at 30 CFR 777.14(a) concerning the general requirements for maps and plans require, in pertinent part, that:

Maps submitted with applications shall be presented in a consolidated format, to the extent possible, and shall include all the types of information that are set forth on topographic maps of the U.S. Geological Survey of the 1:24,000 scale series. * * * Maps of the adjacent area shall clearly show the lands and waters within those areas and be in a scale determined by the regulatory authority, but in no event smaller than 1:24,000.

30 CFR Part 730 sets forth criteria and procedures for amending approved programs to be no less stringent that SMCRA and no less effective than the Federal regulations, and does not contemplate the use of guidelines in lieu of counterpart State laws and regulations. Thus, we determined that Wyoming's proposal to remove the scale requirement from its currently approved rules and place it in a guideline renders its program less stringent than SMCRA and less effective than the Federal regulations, and concluded that Wyoming must retain the 1:24,000 scale requirement at Chapter 2, Section 1(c) for maps that are submitted with permit applications.

Wyoming replied in a letter dated June 21, 2010, that it will submit a rule package to the Advisory Board that will put the 1:24,000 scale requirement back into its rules at Chapter 2, Section 1(c).

Based on the discussion above, we are not approving Wyoming's proposed rule change deleting the 1:24,000 scale requirement at Chapter 2, Section 1(c) for maps that are submitted with permit applications. We also acknowledge Wyoming's commitment to reinstate the proposed deletion in a future rulemaking effort and are deferring our decision on it until such time as the rule is formally submitted to OSMRE for review.

9. Chapter 2, Section 3(a)–(m); Vegetation Baseline Requirements

Wyoming proposes to add a new section to its rules at Chapter 2, Section 3 entitled ''Vegetation Baseline Requirements.''

In its SOPR, Wyoming states that Section 3, Vegetation Baseline Requirements, is almost entirely new language for Chapter 2. Wyoming explains that most of these rules are relocated from Appendix A, and include rules on mapping, sampling, species inventory, and vegetation community descriptions. Wyoming continues that the concepts contained in the current Appendix A and elsewhere in Chapters 2 and 4 were combined and presented in a single location to provide clarity and consistency to maps provided to the LQD for review. Wyoming maintains that the new section includes rules that assimilate and clarify the requirements applicable to the mapping of vegetation communities, and states that terminology used by the Natural Resources Conservation Service may be used to describe the vegetation communities. The rules contain a requirement that locations of certain weeds be shown on the map, and Wyoming states that this has been the normal practice but it is now clarified in the rules. Wyoming also proposes to reduce baseline measurement

requirements for plant communities that have already been thoroughly described in previous baseline studies and proposes to add new rules on shrub standard option selection and sample sizes. Additionally, the requirement for production measurements was eliminated for baseline sampling unless the operator is developing a technical standard or the vegetation community has not been described adequately in the past. Wyoming explains that a semi-quantitative method is proposed for areas where the LQD has numerous data sets that describe in detail the pre-mine vegetation communities.

The Federal regulations at 30 CFR 779.19 concerning the general requirements for collecting information on plant communities to document pre-mine baseline vegetation conditions require that:

(a) The permit application shall, if required by the regulatory authority, contain a map that delineates existing vegetative types and a description of the plant communities within the proposed permit area and within any proposed reference area. This description shall include information adequate to predict the potential for reestablishing vegetation.

(b) When a map or aerial photograph is required, sufficient adjacent areas shall be included to allow evaluation of vegetation as important habitat for fish and wildlife for those species of fish and wildlife identified under 30 CFR 780.16.

Furthermore, the Federal regulations at 30 CFR 816/817.116 require the use of statistically valid sampling techniques to ensure that that all revegetation meet or exceed success standards—including criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking—for purposes of achieving bond release, regardless of whether technical standards or comparisons to reference areas are used. All approved State programs must maintain counterparts to these key nationwide minimum protections.

Therefore, any methods used to designate a reference area for comparison to reclaimed areas and demonstrate revegetation success at the time of bond release should also use valid methods of comparison during such designation and during the success standard demonstration.

In its SOPR, Wyoming acknowledges this requirement, in part, by stating that ''With the exception of shrubs which have special rules * * *, the baseline data collected by quantitative methods are not used to develop bond release standards unless a technical standard is being developed because reference areas are used instead when a technical standard is not. The development of technical standards requires the use of data that are collected by specified methods that ensures the data is representative of the vegetation community. Quantitative methods are also appropriate for those mining areas that have vegetation communities that have not been fully described by previous baseline studies.''

Wyoming's proposed amendment relocates and combines existing previously approved rules from former Appendix A and Chapters 2 and 4 in a single location to maintain organizational continuity and provide clarity and consistency regarding mapping, sampling, species inventory, and vegetation community descriptions. Moreover, Wyoming's newly-proposed rules on shrub standard option selection and sample sizes provide specificity beyond that contained in the Federal regulations. We find that Wyoming's explanation justifying the addition of these new provisions in Chapter 2, Section 3 is reasonable, and the lack of exact Federal counterpart requirements do not render them less effective than the Federal regulations. Accordingly, we are approving them.

10. Chapter 2, Section 4(a)(xvii); Public Availability of Permit Applications and Confidentiality

In an October 29, 1992, **Federal Register** (57 FR 48987) notice, we required Wyoming to further amend its regulations regarding procedures, including notice and opportunity to be heard for persons seeking disclosure, to ensure confidentiality of qualified information, which shall be clearly identified by the by the applicant and submitted separately from the remainder of the application as required by the Federal regulations at 30 CFR 773.13(d)(3). The Federal rules concerning Public Participation in Permit Processing were subsequently amended and redesignated as 30 CFR 773.6 in a **Federal Register** notice dated December 19, 2000 (65 FR 79663). Consequently, the rules addressing confidentiality are now found at 30 CFR 773.6(d)(3).

In response to the required program amendment at 30 CFR 950.16(u), Wyoming proposes to revise its rules at Chapter 2, Section 4(a)(xvii) regarding procedures for protecting the confidentiality of qualified archeological information to read as follows:

(xvii) Boundaries and descriptions of all cultural, historic and archaeological resources listed on, or eligible for listing on, the National Register of Historic Places. In compliance with the Archaeological Resources Protection Act of 1979 (P.L. 96–95), this information shall not be placed on display at the county clerk's office (as required by W.S. § 35–11–406(d)) where such resources occur on lands owned by the United States. This information shall be clearly labeled as ''Confidential'' and submitted separately from the remainder of the application materials. Requests to disclose confidential information shall be administered under the Department of Environmental Quality, Rules of Practice and Procedure, the Wyoming Public Records Act (W.S. §§ 16–4–2001 thru 16–4–2005 (2007)) and the Wyoming Environmental Quality Act (2007).

In its SOPR, Wyoming explains that the proposed rule language clarifies that information related to the nature and location of archeological resources on public lands shall be submitted separately from other application materials, and outlines the procedures which govern requests to disclose information that has been submitted as confidential. Wyoming further notes that the proposed language references the Department of Environmental Quality Rules of Practice and Procedure, the Wyoming Public Records Act, and the Environmental Quality Act to more clearly identify the applicable standards regarding the administration of requests for confidential information.

Although Wyoming's rationale for making the rule change is sound, the proposed language referencing its Public Records Act contains an incorrect citation wherein W.S. §§ 16–4–2001 thru 16–4–2005 (2007) is referenced rather than W.S. §§ 16–4–201 thru 16–4–205 (2007). For this reason, we are not approving Wyoming's proposed rule revision rule regarding administrative procedures to ensure confidentiality of qualified archaeological information and the required program amendment at 30 CFR 950.16(u) remains outstanding.

11. Chapter 2, Section 5(a)(viii)(A); Fish and Wildlife Enhancement Measures

In a July 8, 1992, **Federal Register** (57 FR 30124), we placed a required program amendment on Wyoming at 30 CFR 950.16(p) that discussed two distinct items. The first item required Wyoming to revise its rules at former Chapter 2, Section 3(b)(iv)(A) or otherwise amend its program to specify that, when fish and wildlife enhancement measures are not included in a proposed permit application, the applicant must provide a statement explaining why such measures are not practicable. The second item required that the rule be revised to clarify that fish and wildlife enhancement measures are not limited to revegetation efforts.

In response to questions from OSMRE regarding the underlying rationale for not revising or amending its rules in response to 30 CFR 950.16(p), Wyoming explains that it informally submitted rule language [in a January 28, 1993, letter] that was intended to resolve the required program amendment. By letter dated April 12, 1993, OSMRE found that the proposed language was less effective than the Federal counterpart regulations, and it appears that Wyoming never attempted to revise the language and promulgate it anytime after the 1993 comment letter. Consequently, Wyoming states that it did not draft any specific language to address the required amendment in this rule package.

Rather, Wyoming provides additional clarification and suggests that the current requirements of Chapter 2, Section 5(a)(viii)(B) (former Chapter 2, Section 3(b)(iv)(B)) and Chapter 4, Section 2(r) (former Chapter 4, Section 3(o)), respectively, address the required program amendment. Wyoming continues that OSMRE's April 12, 1993, comment letter directed it to clarify that wildlife enhancement was not limited to revegetation efforts. Wyoming also states that the deficient language is now found in Chapter 2, Section 5(a)(viii)(A) and it has not changed. However, Wyoming submits that the language in subsection (B) makes clear that enhancement efforts are not limited to revegetation because this section goes on to clarify that the applicant must show how certain habitat components and features will be ''protect[ed] or enhance[d].'' This would include important habitats such as wetlands, riparian areas, rimrocks, and other special habitat features. Wyoming also notes that the wildlife performance standards contained in Chapter 4, Section 2(r) speaks to things other than vegetation (Administrative Record Document ID No. OSM–2009–0012–0009).

We replied in a letter dated May 21, 2010, that OSMRE's April 12, 1993, comment letter in response to Wyoming's informal rule proposal stated that ''the existing rules at Chapter II, Section 3(b)(iv)(A) appear to limit enhancement only to revegetation efforts in Chapter IV, Section 3(o).'' We also noted that this ''is confusing since the rules at Chapter IV, Section 3(o) refer to many enhancement features in addition to revegetation enhancement which is specifically located at Chapter IV, Section 3(o) (D). Thus, it appears that removal of the existing language ''through successful revegetation'' * * * would allow enhancement features to include all the items in Chapter IV, Section 3(o).'' Notwithstanding Wyoming's reference to Chapter 2, Section 5(a)(viii)(B) our position remains unchanged from the April 12, 1993, comment letter. The July 8, 1992, **Federal Register** (57 FR 30124) specifically identified former Chapter 2, Section 3(b)(iv)(A) as being the deficient provision in Wyoming's rules, and Wyoming states that the problematic language has not changed. For these reasons, we continue to interpret current Chapter 2, Section 5(a)(viii)(A) as limiting the scope of enhancement measures to revegetation efforts and concluded that Wyoming's explanation does not satisfy the program deficiency specified in 30 CFR 950.16(p).

Next, Wyoming submits that while it did not specifically add a provision requiring a statement from the applicant when that person did not include enhancement efforts in a proposed permit application, Chapter 2, Section 5(a)(viii)(B) requires a statement of how the applicant will ''utilize monitoring methods as specified in Appendix B * * * and impact control measures and management techniques to protect and enhance'' wildlife habitats and features. Wyoming also asserts that Chapter 4, Section 2(r) requires the operator to the extent possible using the best technology currently available minimize disturbance and impacts and achieve enhancement of such resources when practicable. Accordingly, Wyoming believes that the combination of these two sections is no less effective than the Federal regulations because the rules are written as affirmative duties on the part of the applicant and are required as part of the application. Specifically, Wyoming states that when an application is reviewed, it would become apparent that the applicant did not include enhancement measures and then the application would not be deemed complete which would require follow up information by the applicant. Therefore, the applicant would either include additional enhancement features or respond that the enhancement features would not be practicable.

In our May 21, 2010, letter we responded that the Federal regulations at 30 CFR 780.16 and 784.21(b)(3)(ii) require, in pertinent part:

> * * * Where the plan does not include enhancement measures, a statement shall be given explaining why enhancement is not practicable.

We also maintained that in its January 28, 1993, informal rule submittal in response to 30 CFR 950.16(p), Wyoming proposed to amend its rules at former Chapter II, Section 3(b)(iv)(A) by adding the following language:

> When such enhancement measures are not included in a plan, the applicant shall affirmatively demonstrate why such measures are not practicable.

OSMRE found this language to be acceptable, but stated that ''Discussion of such enhancement plans would appear to be relevant to LQD Rules at Chapter II, Section 3(b)(iv) which discusses 'A plan for minimizing adverse impacts to fish, wildlife, and related environmental values'.'' We further explained that ''In order to be no less effective than the Federal requirements and to provide for clarity of the Wyoming program the proposed language at LQD Rules Chapter II, Section 3(b)(iv)(A) should be relocated at Chapter II, Section 3(b)(iv) which discusses 'A plan' or Wyoming should clarify how the existing rule construction is to be interpreted.'' This statement now applies to current Chapter 2, Section 5(a)(viii).

As Wyoming states above, it never attempted to revise the language and promulgate it anytime after the 1993 comment letter and did not draft any specific language to address the required amendment. Accordingly, the basis for OSMRE's April 12, 1993, comment letter still applies, particularly since Wyoming previously proposed language that appears to have been acceptable to OSMRE but was never resubmitted. For these reasons we determined that the additional information offered by Wyoming and reliance on its application review process falls short of directly imposing on an applicant the requisite burden to provide a statement explaining why enhancement measures are not practicable when they are not included in a permit application.

Lastly, Wyoming notes that Chapter 2, Section 5(a)(viii)(B)(II) includes an improper reference. Specifically, that section refers to a consultation process found at Section 2(a)(vi)(G). However, the reference should have been revised to reflect the new chapter reorganization and Wyoming states that it will be corrected during the next rulemaking.

Wyoming replied in a letter dated June 21, 2010, that it will present rule language to its Advisory Board that will address both the required program amendment as well as the incorrect Chapter citation in subsection (II).

Based on the discussion above, we do not accept Wyoming's explanation for not revising or amending its rules in response to 30 CFR 950.16(p). We also acknowledge Wyoming's commitment to address both the required program amendment and the incorrect cross-reference in a future rulemaking effort, and are deferring our decision on them

until such time as the changes are formally submitted to OSMRE for review.

12. Chapter 2, Section 2(b)(iii)(G); Weed Control Plan

Wyoming proposes to add a new rule at Chapter 2, Section 6(b)(iii)(G) requiring that reclamation plans include a weed control plan for State of Wyoming Designated Noxious and Designated Prohibited Weeds, and on Federal surface, any additional weeds listed by the Federal land managing agency. In its SOPR, Wyoming explains that Subsection G has been added to clarify that only those weeds designated by the State as noxious and prohibited are required to have a control plan in addition to those by the Federal land managing agency if Federally owned surface land is involved.

The Federal regulations at 30 CFR 816/817.111(b)(5) require that the reestablished plant species shall meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

The Federal definition of noxious plants at 30 CFR 701.5 means species that have been included on official State lists of noxious plants for the State in which the surface coal mining and reclamation operation occurs.

While there is no direct Federal counterpart to the proposed rule, it implements the Federal requirement at 30 CFR 816/817.111(b)(5) and, as proposed, is no less effective than the Federal regulations. Accordingly, we approve it.

13. Chapter 2, Section 6(b)(iii)(D); Reclamation Plan Tree Replacement Requirements

Wyoming proposes to add a new rule at Chapter 2, Section 6(b)(iii)(D) requiring that reclamation plans include the tree species, the number per species, and the location of tree plantings.

Wyoming's proposed rule contains language that was previously approved by OSMRE in an August 28, 2006, **Federal Register** (71 FR 50848, 50850) for Wyoming's rules at Chapter 4, Section 2(d)(x)(F). In that approval, we found that Wyoming's proposed wording was consistent with the Federal rules at 30 CFR 816.116(b)(3) which establish criteria for revegetation standards for tree and shrub establishment. Similar to that decision, we are approving Wyoming's proposed rule language regarding reclamation plan tree replacement requirements at Chapter 2, Section 6(b)(iii)(D). While there is no direct Federal counterpart to the proposed rule, we find that it implements the Federal requirements at 30 CFR 780.18(b)(5) and 816/817.116(b)(3), respectively.

14. Chapter 4, Section 2(c)(xii)(D)(II); Siltation Structures and Impoundments

Wyoming proposes to revise its rules at Chapter 4, Section 2(c)(xii)(D)(II) to be consistent with its proposed rule language in Chapter 4, Section 2(g)(iv)–(v) and correct a deficiency in response to a February 21, 1990, letter issued by OSMRE. Subsection C–2 of that letter states ''[t]hese Federal rules have been revised to require that structures meeting the criteria of 30 CFR 77.216(a) and either constructed of coal mine waste or intended to impound coal mine waste have sufficient spillway and/or storage capacity to safely pass or control the runoff from the probable maximum precipitation of a 6-hour or greater precipitation event. Since the Wyoming rule currently specifies the 100-year, 6-hour event, the State will need to revise its rule to incorporate the larger event.''

Wyoming informally responded to the February 21, 1990, letter on May 14, 1990, and stated that it would amend its rules to require that permanent impoundments meeting the criteria of 30 CFR 77. 216(a), which are constructed of coal mine waste or are intended to impound coal mine waste, have sufficient spillway and/or storage capacity to safely pass or control runoff from the probable maximum precipitation of a 6-hour or greater event. OSMRE replied on October 3, 1990, that, to be no less effective than the Federal regulations at 30 CFR 816/817.84(b)(2), Wyoming must revise its rules to require that all coal mine waste impounding structures, which are temporary structures, must have sufficient spillway and/or storage to safely pass or control runoff from the probable maximum precipitation of a 6-hour or greater storm. Wyoming has satisfied this deficiency at Chapter 4, Section 2(g)(v)(B) in its proposed rule package. (See Section III.C. above).

Revised Chapter 4, Section 2(c)(xii)(D)(II), pertaining to dams and embankments constructed to impound coal mine waste, reads as follows:

> If the impounding structure meets the criteria of 30 CFR § 77.216(a), the combination of principal and emergency spillways shall be able to safely pass or control runoff from the probable maximum precipitation of a 6-hour precipitation event or a storm duration having a greater peak flow, as may be required by the Administrator.

Following our initial review of Wyoming's proposed rule change, OSMRE responded by letter dated May 21, 2010, that the proposed language is vague and the phrase ''control runoff'' is open to interpretation without the specificity of 'storage capacity' to contain or control the design event runoff. Consequently, in order to comply with Item C–2 of the February 21, 1990, letter and maintain consistency with its proposed rule at Chapter 4, Section 2(g)(v)(B), OSMRE required Wyoming to revise its rule language at Section 2(c)(xii)(D)(II) to require that all temporary coal mine waste impounding structures shall have ''sufficient spillway and/or storage capacity to safely pass or control runoff'' from a 6-hour event.

Wyoming responded in a letter dated June 21, 2010, by clarifying that the rule in question at Chapter 4, Section 2(c)(xii)(D)(II) would always operate together with Chapter 4, Section 2(g)(v)(B), and that subsection 2(c)(xii)(D)(II) is only applicable to the dam or embankment. Wyoming further explained that subsection 2(c)(xii)(D)(II) discusses design requirements for the principal and emergency spillways and does not discuss the storage capacity because the regulated party would have to comply with the requirements applicable to temporary impoundments in subsection 2(g)(v)(B).

We agree that the result of Chapter 4, Section 2(c)(xii)(D)(II), when functioning in concert with Chapter 4, Section 2(g)(v)(B), ensures that the coal mine waste impounding structure will have a sufficient spillway capacity to safely pass, adequate storage to safely control, or a combination of storage capacity and spillway capacity to safely control the probable maximum precipitation of a 6-hour precipitation event or greater as specified by the regulatory authority. Accordingly, we find that the combination of Wyoming's rules at Chapter 4, Section 2(c)(xii)(D)(II) and Chapter 4, Section 2(g)(v)(B) are no less effective than the corresponding Federal regulations at 30 CFR 816/817.84(b)(2) and we are approving them.

15. Chapter 4, Section 2(d)(i)(M) and (ii); Normal Husbandry Practices and Revegetation Success Standards

Wyoming proposes to substantially reorganize the structure of Chapter 4 Section 2(d) into two new subsections with subsection (i) containing general revegetation performance standards and most of the current Section 2(d) rules, and adding rules dealing with normal husbandry practices. Subsection (ii) contains Revegetation Success Standards listed by post-mine land use categories.

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR

816.116(a)(1) by eliminating the requirement that revegetation success standards and statistically valid sampling techniques be included in approved State regulatory programs (71 FR 51684, 51688). The revised current regulation continues to require that standards for success and sampling techniques for measuring success must be selected by the regulatory authority, and shall be described in writing and made available to the public in order to ensure that all interested parties can readily find out all the options available in their jurisdiction for evaluating revegetation success. The removal of the approved program requirement does not leave a regulatory void as our regulations at 816.116(a)(2) and (b), which remain in effect, already specify minimum criteria for success standards and sampling techniques, and those criteria will ensure the achievement of SMCRA's goal of establishing a diverse, permanent, and effective vegetative cover. Section 816.116(a)(2) provides that the sampling techniques must use a 90-percent confidence interval (also known as a one-sided test with a 0.10 alpha error), and that the ground cover, production or stocking must meet 90 percent of the success standard. Section 816.116(b) provides additional guidelines for particular types of ecosystems and post-mining land uses. These nationwide minimum requirements for revegetation success and sampling techniques will continue to apply to the State regulatory authorities and indirectly to the permits that they issue.

In accordance with the requirements at 30 CFR 816.116(a)(1), Wyoming both describes in writing and makes available to the public the post-mine land use revegetation success standards it has selected by virtue of its proposed rule changes. Therefore, consistent with the rationale explained in OSMRE's August 30, 2006, rule change, we are making no decision on Wyoming's revegetation success rules at Chapter 4, Section 2(d)(ii) as they are not required to be included in the approved regulatory program.

However, OSMRE approval is still required for the list of Normal Husbandry Practices Wyoming proposes in its Coal Rules and Regulations at Chapter 4, Section 2 (d) (i) (M) that mine operators may employ without restarting the responsibility period prior to application for Phase III bond release. The September 7, 1988, **Federal Register** notice (53 FR 34641) states that OSMRE ''would consider, on a practice-by-practice basis, the administrative record supporting each practice proposed by a regulatory authority as normal husbandry practice'' and that the regulatory authority ''would be expected to demonstrate (1) that the practice is the usual or expected state, form, amount, or degree of management performed habitually or customarily to prevent exploitation, destruction, or neglect of the resource and maintain a prescribed level of use or productivity of similar unmined lands and (2) that the proposed practice is not an augmentative practice prohibited by section 515(b)(20) of [SMCRA].''

The Federal regulations at 30 CFR 816.116(c)(1) for surface mining operations and 817.116(c)(1) for underground mining operations require that the period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with 30 CFR 816(c)(4) and 817.116(c)(4).

The Federal regulations at 30 CFR 816.116(c)(4) and 817.116(c)(4) require that a regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, provided it obtains prior approval from OSMRE's Director that the practices are normal husbandry practices, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent vegetation success. Approved practices shall be normal husbandry practices within the region for unmined land having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and, any pruning, reseeding, and transplanting specifically necessitated by such actions.

In response to a deficiency identified by OSMRE in a February 21, 1990, letter, Wyoming is proposing to add eleven categories of Normal Husbandry Practices that will not be considered augmented practices and will not result in the restart of the responsibility period. Each category references the applicable Conservation Practice Standard currently approved by the Wyoming Natural Resources Conservation Service that will be included as approved Normal Husbandry Practices for the category.

During our initial review of the amendment proposal, OSMRE identified incorrect performance standard citation references in Wyoming's proposed normal husbandry practice for supplemental planting of tree and shrub stock at Chapter 4, Section 2(d)(i)(M)(II). We notified Wyoming of our concerns by letter dated May 21, 2010, (Administrative Record No. OSM–2009–0012–0006) and delayed final rulemaking to afford Wyoming the opportunity to submit new material to address the deficiency. Wyoming replied in a letter dated June 21, 2010, that it will present corrected Chapter citations for subsection (II) to its Advisory Board as part of a future rule package (Administrative Record No. OSM–2009–0012–0007). Consequently, we do not approve Wyoming's proposed normal husbandry practice for supplemental planting of tree and shrub stock at Chapter 4, Section 2(d)(i)(M)(II). We also acknowledge Wyoming's commitment to address the incorrect performance standard citation references in a future rulemaking effort, and are deferring our decision on them until such time as the changes are formally submitted to OSMRE for review.

To remain clear and concise and to eliminate repetition, we have grouped the remaining ten categories of proposed normal husbandry practices as follows: Interseeding (III.E.15.A.); Grazing (III.E.15.B.); Shelterbelt (III.E.15.C.); Cropland and Pastureland Fertilization (III.E.15.D.); Mechanical (III.E.15.E.); Cropland Tillage and Replanting (III.E.15.F.); Weed and Pest Control; Controlled Burning; Subsidence, Settling, and Erosion; and Removal of Pipelines, Small Culverts, and Sediment Control Measures (III.E.15.G.).

A. Interseeding. Wyoming proposes to add the following language regarding Interseeding at Chapter 4, Section 2(d)(i)(M)(I):

> The operator may interseed species contained in the approved seed mix over established revegetation, but not within 6 years before the end of the bond responsibility period. The operator may add mulch to an interseeded area to facilitate plant establishment. Augmented seeding (reseeding) is not considered normal husbandry practice.

Wyoming proposes an appropriate time frame limiting the application of interseeding as a normal husbandry practice without restarting the bond liability period. Exceeding this limit would result in extending the period of responsibility. OSMRE has determined that the proposed normal husbandry practices for interseeding meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

B. Grazing. Wyoming proposes to add the following language regarding Grazing at Chapter 4, Section 2(d)(i)(M)(III):

Grazing of reclamation is a normal husbandry practice.

OSMRE has determined that the proposed normal husbandry practices for grazing meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

C. Shelterbelt. Wyoming proposes to add the following language regarding Shelterbelt at Chapter 4, Section 2(d)(i)(M)(IV):

For trees and shrubs planted in an approved shelterbelt, the practices of fertilization, irrigation and rototilling may be used as normal husbandry/nursery practices in accordance with standard practices.

OSMRE has determined that the proposed normal husbandry practices for shelterbelt meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

D. Cropland and Pastureland Fertilization. Wyoming proposes to add the following language regarding Cropland and Pastureland Fertilization at Chapter 4, Section 2(d)(i)(M)(V):

Beyond establishment, fertilization is a normal husbandry practice for cropland and pastureland throughout the bond responsibility period. Irrigation is a normal husbandry practice beyond establishment for cropland and pastureland, provided the approved postmine land use is irrigated cropland or irrigated pastureland.

OSMRE has determined that the proposed normal husbandry practices for cropland and pastureland fertilization meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

E. Mechanical. Wyoming proposes to add the following language regarding Mechanical at Chapter 4, Section 2(d)(i)(M)(VI)

Mechanical husbandry practices such as selective cutting, mowing, combining, aerating, land imprinting, raking, or harrowing to stimulate permanent vegetation establishment, increase decomposition of organic matter, control weeds, harvest hay, and/or reduce standing dead vegetation and litter are considered normal husbandry practices. Other mechanical practices may be used if approved by the Administrator prior to their application.

OSMRE has determined that the proposed normal husbandry practices for mechanical meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

F. Cropland Tillage and Replanting. Wyoming proposes to add the following language regarding Cropland Tillage and Replanting at Chapter 4, Section 2(d) (i) (M) (VII):

Tillage and replanting are considered normal husbandry practices for croplands.

OSMRE has determined that the proposed normal husbandry practices for cropland tillage and replanting meet the criteria to be approved as normal husbandry practices under 30 CFR 816/817.116(c)(4). Accordingly, we approve these proposed changes to Wyoming's Coal Rules and Regulations.

G. Weed and Pest Control; Controlled Burning; Subsidence, Settling, and Erosion; and Removal of Pipelines, Small Culverts, and Sediment Control Measures. Wyoming proposes to add the following language regarding Weed and Pest Control at Chapter 4, Section 2(d)(i)(M)(VIII):

Acceptable weed and pest control techniques representing normal husbandry practices include manual or mechanical removal, controlled burning, biological controls, and herbicide/pesticide applications. The operator may reseed treated areas of less than five acres per year as a component of this husbandry practice without restarting the bond responsibility period.

Wyoming proposes to add the following language regarding Controlled Burning at Chapter 4, Section 2(d)(i)(M)(IX):

Controlled burning may be used to reduce the buildup of litter, weed seeds, and to control undesirable species. The operator may interseed any portion of the treated area, or reseed up to five acres, as a component of this husbandry practice without restarting the bond responsibility period.

Wyoming proposes to add the following language regarding subsidence, settling, and erosion at Chapter 4, Section 2(d)(i)(M)(X):

Subsidence, settling, and erosional features, such as rills, gullies, or headcuts less than five acres in size may be repaired as a normal husbandry practice. Repairs considered to be normal husbandry practices include hand work, mechanical manipulation, installation of erosion-control matting, silt fences, straw bales, or other similar work. The operator may reseed treated areas of less than five acres as a component of this husbandry practice without restarting the bond responsibility period.

Wyoming proposes to add the following language regarding removal of pipelines, small culverts, and sediment control measures at Chapter 4, Section 2(d)(i)(M)(XI):

Removal of pipelines, small culverts, and small sediment control measures, such as traps, riprap, rock or straw bale check dams, small sediment ponds, and silt fences are considered normal husbandry practices. The operator may reseed treated areas of less than five acres as a component of this husbandry practice without restarting the bond responsibility period, provided the structures are reclaimed at least two years prior to the end of the bond responsibility period.

As proposed, the Wyoming normal husbandry practice categories for weed and pest control; controlled burning; subsidence, settling, and erosion; and removal of pipelines, small culverts, and sediment control measures are normal husbandry practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. In addition, these normal husbandry practices contain a provision that allows operators to reseed treated areas of less than five acres as a component of the husbandry practice without restarting the bond responsibility period. While reseeding is normally associated with ''augmented seeding,'' which is not considered normal husbandry practice, reseeding in these particular instances is specifically necessitated by the management practices that are being used to achieve revegetation success in accordance with 30 CFR 816.116/817.116(c) (4). We also find that the proposed five acre limit is both reasonable and realistic considering similar areal limitations have been previously approved by OSM in Colorado, Montana, and New Mexico, and the size and extent of disturbance on surface mining operations in Wyoming often involves hundreds or even thousands of acres. Consequently, OSMRE finds that Wyoming's proposed normal husbandry practices identified above are consistent with and no less effective than the Federal regulations at 30 CFR 816.116/817.116(c)(1) and (4) in meeting the requirements of SMCRA and we approve them.

16. Chapter 5, Section 2(b)(iii); Prime Farmland

Wyoming proposes to revise its rules at Chapter 5, Section 2(b)(iii) to address a deficiency that was identified in a February 21, 1990, letter issued by OSMRE. Subsection B–1 of that letter stated that ''Wyoming's regulations include an exemption from prime farmland performance standards for small acreage based upon an

unidentified economic determination. The Federal rules contain no such exclusion, except to the extent that such acreage is so small that it would not qualify for mapping under Soil Conservation Service rules and standards. Therefore, Wyoming must eliminate this provision to be no less effective than the Federal regulations.''

In a May 14, 1990, informal response to the February 21, 1990, letter, Wyoming stated that ''[t]he exemption from prime farmland performance standards for small acreage will be deleted from the State rule.'' In a letter dated October 3, 1990, OSMRE informally replied that ''[t]he proposal to remove the exemption from prime farmland performance standards appears acceptable.'' Wyoming now proposes to remove the problematic language and retain the sentence ''Areas where permits were issued prior to August 3, 1977, are exempt from the reconstruction standards of this Section.'' The revised rule contains language that is consistent with and no less effective than the corresponding Federal regulations at 30 CFR 785.17(a)(1) and we approve it.

F. Revisions to Wyoming's Rules With No Corresponding Federal Regulations

Wyoming proposed numerous revisions to its regulatory program for which there are no Federal counterpart provisions. The proposed changes are intended to simplify references to applicable rules, reduce unnecessary, outdated, and duplicative language, reorganize and/or relocate already existing and approved language to a more appropriate place within the regulations, and to provide clarification and specificity to the rules pertaining to vegetation studies and revegetation standards.

1. Wyoming proposes to relocate existing previously approved definitions from former Appendix A to Chapters 1, 2, and 4. The language in the relocated Appendix A definitions has been revised to be technically current and rewritten to better fit the rules format. Wyoming's definition changes are intended to add specificity and clarity to current and proposed rules and/or sampling methods, standardize/support sampling methodology and provide consistency in data reporting, and support its proposed revisions to the performance standards in Chapters 2 and 4. Wyoming also proposes several new definitions that provide guidance beyond that contained in the Federal regulations. We find that the rationale Wyoming provided for justifying the relocation of the revised and existing definitions from Appendix A is reasonable, and the lack of Federal counterpart language for the newly-proposed rules do not render them less effective than SMCRA and the Federal regulations. For these reasons, we are approving the following proposed rule changes.

Chapter 1, Section 2(f); new definition of ''Annual;''

Chapter 1, Section 2(k); new definition of ''Barren;''

Chapter 1, Section 2(l); relocation of revised definition of ''Baseline vegetation inventory'' from Appendix A Glossary;

Chapter 1, Section 2(m); new definition of ''Belt transect;''

Chapter 1, Section 2(p); new definition of ''Biennial;''

Chapter 1, Section 2(r); new definition of ''Bond responsibility period;''

Chapter 1, Section 2(s); new definition of ''Cactus;''

Chapter 1, Section 2(z); relocation of revised definition of ''Cool season plant'' from Appendix A Glossary;

Chapter 1, Section 2(aa); combined definitions of ''Cover'' in Chapter 1 and Appendix A Glossary;

Chapter 1, Section 2(ab); new definition of ''Cover crop;''

Chapter 1, Section 2(ae); new definition of ''Cryptogam;''

Chapter 1, Section 2(ak); relocation of revised definition of ''Dominant'' from Appendix A Glossary;

Chapter 1, Section 2(ao); new definition of ''Endangered species;''

Chapter 1, Section 2(ap); new definition of ''Enhancement wetland;''

Chapter 1, Section 2(az); new definition of ''Forb;''

Chapter 1, Section 2(bd); new definition of ''Graminoid;''

Chapter 1, Section 2(be); new definition of ''Grass;''

Chapter 1, Section 2(bf); new definition of ''Grass-like;''

Chapter 1, Section 2(bg); relocation of revised definition of ''Grazing exclosure'' from Appendix A Glossary;

Chapter 1, Section 2(bs); new definition of ''Inclusion;''

Chapter 1, Section 2(bv); new definition of ''Introduced;''

Chapter 1, Section 2(bz); new definition of ''Lichen;''

Chapter 1, Section 2(ca); relocation of revised definition of ''Life form'' from Appendix A Glossary;

Chapter 1, Section 2(cb); relocation revised definition of ''Litter'' from Appendix A Glossary;

Chapter 1, Section 2(cc); new definition of ''Major species;''

Chapter 1, Section 2(cg); new definition of ''Mitigation wetland;''

Chapter 1, Section 2(cj); new definition of ''Moss;''

Chapter 1, Section 2(cl); new definition of ''Native;''

Chapter 1, Section 2(co); new definition of ''Perennial;''

Chapter 1, Section 2(cs); new definition of ''Plant species inventory;''

Chapter 1, Section 2(cu); relocation of revised definition of ''point intercept'' from Appendix A Glossary;

Chapter 1, Section 2(cx); relocation of revised definition of ''Primary shrub species'' from Appendix A Glossary;

Chapter 1, Section 2(da); relocation of revised definition of ''Production'' from Appendix A Glossary;

Chapter 1, Section 2(df); relocation of revised definition of ''Quadrat'' from Appendix A Glossary;

Chapter 1, Section 2(dg); new definition of ''Qualitative;''

Chapter 1, Section 2(dh); new definition of ''Quantitative;''

Chapter 1, Section 2(di); new definition of ''Random;''

Chapter 1, Section 2(dp); new definition of ''Rock;''

Chapter 1, Section 2(ds); new definition of ''Sample unit;''

Chapter 1, Section 2(dt); new definition of ''Seasonal variety;''

Chapter 1, Section 2(dv); new definition of ''Self-renewing;''

Chapter 1, Section 2(dw); new definition of ''Semi-quantitative;''

Chapter 1, Section 2(dx); new definition of ''Shrub;''

Chapter 1, Section 2(dy); relocation of revised definition of ''Shrub mosaic'' from Appendix A Glossary;

Chapter 1, Section 2(dz); relocation of revised definition of ''Shrub patch'' from Appendix A Glossary;

Chapter 1, Section 2(eg); new definition of ''Species of Special Concern;''

Chapter 1, Section 2(el); relocation of revised definition of ''Study area'' from Appendix A Glossary;

Chapter 1, Section 2(eo); relocation of revised definition of ''Subshrub'' from Appendix A Glossary;

Chapter 1, Section 2(es); new definition of ''Substantially complete;''

Chapter 1, Section 2(eu); new definition of ''Succulent;''

Chapter 1, Section 2(ex); new definition of ''Systematic sampling;''

Chapter 1, Section 2(ey); new definition of ''Technical revegetation success standard;''

Chapter 1, Section 2(ez); new definition of ''Threatened species;''

Chapter 1, Section 2(fe); relocation of revised definition of ''Transect'' from Appendix A Glossary;

Chapter 1, Section 2(ff); new definition of ''Tree;''

Chapter 1, Section 2(fm); revised definition of ''Vegetation type;''

Chapter 1, Section 2(fn); relocation of revised definition of ''Warm season plant'' from Appendix A Glossary;

2. Chapter 1, Section 2(n); Definition of ''Best Practicable Technology''

Wyoming proposes to add a new definition for ''Best Practicable technology'' to its rules at Chapter 1, Section 2(n) that reads as follows:

(j) ''Best Practicable technology'' means a technology based on methods and processes that are both practicable and reasonably economic and is justifiable in terms of existing performance and achievability in relation to the establishment of shrubs in the required density, aerial extent and species.

Wyoming states that Best Technology Currently Available is an important component of its shrub rules that became effective in 1996. Wyoming also explains that the new language enables the State to require an operator to revise the permit to adopt shrub establishment methods that are more likely to result in successful shrub establishment if Wyoming finds the operator is not achieving the required shrub density, aerial extent, or species. Wyoming concludes by noting that the term has been changed to Best Practicable technology to reflect that not all technology may be practicable as stated in the previous definition.

Wyoming's proposed definition clarifies that the term ''Best Practicable technology'' relates to shrub establishment whereas term ''Best technology currently available'' applies only to erosion control and fish and wildlife enhancement measures. The proposed definition also provides specificity beyond that contained in the Federal regulations. Moreover, Wyoming's explanation justifying the addition of this provision is reasonable and the lack of a Federal counterpart requirement does not render it less effective than the Federal regulations. Therefore, we approve it.

3. Chapter 1, Section 2(as); Definition of ''Establishment Practices''

Wyoming proposes to add a new definition for ''Establishment practices'' to its rules at Chapter 1, Section 2(as) that reads as follows:

(as) ''Establishment practices'' means practices used to facilitate actual establishment of targeted plants and are not intended to continue throughout the bond responsibility period. These practices are acceptable practices, but delay the start of the bond responsibility period until they are discontinued.

Wyoming states that a definition of ''Establishment practices'' is needed to support its proposed normal husbandry rules [Chapter 4, Section 2(d) (i) (M)], and more clearly differentiate between those practices that delay the start of the bond responsibility period and those which do not impact the bond responsibility period. In its SOPR, Wyoming further explains that establishment practices are those that are used after planting to facilitate actual establishment of the targeted plants, and are not intended to continue throughout the duration of the bond responsibility period. These practices are acceptable, but the start of the bond responsibility period is delayed until they are discontinued. This can be contrasted to approved ''husbandry'' practices that are expected to be continued after the bond responsibility period and do not restart the bond clock.

Wyoming's proposed definition provides specificity beyond that contained in the Federal regulations. Moreover, Wyoming's explanation justifying the addition of this provision is reasonable and the lack of a Federal counterpart definition does not render it less effective than the Federal regulations. Therefore, we approve it.

4. Chapter 1, Section 2(dm); Definition of ''Regulatory Categories''

Wyoming proposes to add a new definition for ''Regulatory Categories'' to its rules at Chapter 1, Section 2(dm) that reads as follows:

(dm) ''Regulatory categories'' means the following time frames that encompass the major regulatory periods from which the different performance and reclamation standards for specified lands within the permit area are established:

(i) ''Category 1'' means those lands which were affected to conduct and/or support mining operations and were completed or substantially completed prior to May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act).

(ii) ''Category 2'' means those lands which were affected on or after May 24, 1969 (the implementation date of the Open Cut Land Reclamation Act) in order to conduct and/or support mining operations and were completed or substantially completed prior to or on June 30, 1973 (day prior to the effective date of the Wyoming Environmental Quality Act).

(iii) ''Category 3'' means those affected lands and support facilities if those lands supported operations which were not completed or substantially completed prior to July 1, 1973 (the effective date of the Wyoming Environmental Quality Act) and any affected lands or support facilities taken out of use on or after July 1, 1973 and before May 25, 1975 (the effective date of the Division's 1975 Rules and Regulations).

(iv) ''Category 4'' means those affected lands if coal was removed from those lands prior to May 3, 1978 and which do not qualify for any of the previous categories. It also means those affected lands and support facilities if they were taken out of use on or after May 25, 1975 (the effective date of the Division's 1975 rules and Regulations) and before May 3, 1978 (the effective date of the Office of Surface Mining's (OSM) Initial Regulatory Program).

(v) ''Category 5'' means those affected lands and support facilities if coal was not removed from those lands prior to May 3, 1978 (the effective date of OSM's Initial Regulatory Program) or those lands were used on or after May 3, 1978 to facilitate mining (including support facilities and associated lands constructed before May 3, 1978 but still in use on or after May 3, 1978).

Wyoming maintains that this definition codifies policy set by the Administrator that has been used for several years (Administrative Record Document ID No. OSM–2009–0012–0008), and is needed to provide consistency in the administration of the applicable reclamation performance standards. The five proposed categories reflect different regulatory time periods and their associated performance and reclamation standards ranging from Category 1 (pre-law, before 1969) to rules based on SMCRA that apply after May 3, 1978, (Category 5). Wyoming explains in its SOPR that because regulations have changed through the years the standards that mined lands must meet are determined by the rules that were in effect when the lands were disturbed.

We agree with Wyoming's need to clarify, provide consistency, and inform coal operators about the different regulatory time periods and their associated performance and reclamation standards. Categories 1 through 4 provide guidance beyond that contained in the Federal regulations and predate the passage of SMCRA. Category 5 clarifies the applicable timeframes wherein lands affected by coal mining operations fall under SMCRA's jurisdiction and are subject to its reclamation performance standards. We find that the underlying rationale Wyoming provided for justifying the addition of these provisions is reasonable and the lack of exact Federal counterpart requirements do not render them less effective than the Federal regulations. Therefore, we approve them.

5. Chapter 1, Section 2(ef); Definition of ''Species Lacking Creditable Value''

Wyoming proposes to add a new definition for ''Species lacking creditable value'' to its rules at Chapter 1, Section 2(ef) that reads as follows:

(ef) ''Species lacking creditable value'' means the cover and production of these species will be estimated but will not be credited or counted towards meeting the revegetation success standards for cover,

production or species diversity and composition. Species lacking creditable value include noxious weeds listed under the Wyoming Weed and Pest Control Act, Bromus japonicus, Bromus tectorum, Taeniatherum caput- medusae, Halogeton glomeratus, Kochia scoparia and Salsola tragus and all synonyms for these species as listed in the Natural Resources Conservation Service's Plants Database.

Wyoming states that the proposed definition prevents using those species that have limited or no value in support of the post mining land uses from being credited toward revegetation success, and thus are not assigned value in quantitative estimates of percent absolute vegetation cover nor annual herbaceous production nor semi-quantitative descriptions of species diversity and species composition. Wyoming goes on to explain in its SOPR that the new definition describes which species may not be counted in reference areas and reclaimed areas for evaluation of reclamation success. Current rules exclude listed noxious weeds from evaluation of reclamation success and exclude annual plants from production measurements. However, the proposed definition includes restrictions for cover and species diversity measurements in addition to production. Wyoming concludes by noting that the species list has been expanded to include six highly invasive species that can prevent reclamation from achieving a land use that is at least equal to pre-mine conditions.

Wyoming's proposed definition provides specificity beyond that contained in the Federal regulations. We also find that the underlying rationale Wyoming provided for justifying the addition of this definition is reasonable and the lack of an exact Federal counterpart requirement does not render it less effective than the Federal regulations. Accordingly, we are approving Wyoming's proposed definition.

6. Chapter 1, Section 2(eg); Definition of ''Species of Special Concern''

Wyoming proposes to add a new definition for ''Species of Special Concern'' to its rules at Chapter 1, Section 2(eg) that reads as follows:

(eg) ''Species of Special Concern'' means those plant species required to be surveyed by the U.S. Fish and Wildlife Service, U.S. Forest Service, and Bureau of Land Management.

Wyoming states that the proposed definition was added to explain Chapter 2 baseline requirements, and notes that the Federal agencies listed above use different terms to describe species that they have determined require monitoring. Wyoming continues that the definition will be used as an umbrella term for those species which must be surveyed for the agencies listed above.

Wyoming's proposed definition provides specificity beyond that contained in the Federal regulations. We also find that the underlying rationale Wyoming provided for justifying the addition of this definition is reasonable and the lack of an exact Federal counterpart requirement does not render it less effective than the Federal regulations. Accordingly, we are approving Wyoming's proposed definition.

7. Wyoming proposes to delete the last sentence of its existing rule at Chapter 2, Section 2(b)(iv)(C) which requires that the Wyoming Department of Agriculture be consulted regarding croplands and erosion control techniques. Wyoming explains in its SOPR that the requirement is being deleted because the LQD and coal operators have gained the necessary experience over the past decades on how to control erosion.

There are no similar provisions in SMCRA or the Federal regulations regarding consultation requirements for croplands and erosion control techniques. However, the remainder of Wyoming's existing rule at Chapter 2, Section 2(b)(iv)(C), which has been relocated to Chapter 2 Section 6(b)(iii)(A), requires that reclamation plans assure revegetation of all affected land in accordance with Chapter 4, Section 2(d) and contain, among other things, the method and schedule of revegetation including erosion control techniques. Additionally, Chapter 4, Section 2(d)(ii)(C)(I) specifically addresses revegetation success standards for cropland and includes requirements for erosion control. For these reasons, Wyoming's deletion of the requirement that the Wyoming Department of Agriculture be consulted regarding croplands and erosion control techniques and its rationale for doing so is acceptable and does not render Wyoming's rules less effective than SMCRA and the Federal regulations. Therefore, we are approving the deletion.

8. Wyoming proposes to add a new rule at Chapter 2, Section 6(b)(iii)(E)(VIII) requiring that for Federally owned surface, the Federal land managing agency shall be consulted for mulching requirements and seeding requirements for cover crops, temporary and permanent reclamation. In response to questions from OSMRE regarding the underlying rationale for the new rule, Wyoming explains that it was added in response to Federal land managing agencies desire to have greater acknowledgement of their role in approving reclamation activities on Federal lands. Wyoming continues that Federal agencies already conduct reviews of the reclamation plans for Federal lands, and this new provision merely reaffirms and clarifies that responsibility (Administrative Record Document ID No. OSM–2009–0012–0008).

Wyoming's proposed amendment provides specificity beyond that contained in the Federal regulations and serves to codify procedures that it currently utilizes. We also find that Wyoming's explanation justifying the addition of this provision is reasonable and the lack of a Federal counterpart requirement does not render it less effective than the Federal regulations. Therefore, we approve it.

9. Chapter 4, Section 2(d)(i)(N); Routine Land Management Activities

Wyoming proposes to add a new rule at Chapter 4, Section 2(d)(i)(N) that defines ''Routine land management activities'' as follows:

(N) The following actions have been administratively identified as those which qualify as routine land management activities; implementing these actions will not restart the bonding liability period:

(I) Installation and/or removal of power lines and substations;

(II) Installation and/or removal of fences;

(III) Installation and/or removal of any monitoring equipment or features;

(IV) Establishment and/or reclamation of two-track trails; and

(V) Emplacement and/or removal of above-ground pipelines.

Wyoming explains in its SOPR that routine land management activities need to be separated to distinguish them from normal husbandry practices. Wyoming further states the LQD Administrator has determined that these activities involve insignificant disturbance area, are temporary in extent, and represent land stewardship practices.

Wyoming's proposed rule language provides specificity beyond that contained in the Federal regulations. We also find that the underlying rationale Wyoming provided for justifying the addition of this rule is reasonable and the lack of Federal counterpart requirements do not render it less effective than the Federal regulations. Accordingly, we are approving Wyoming's proposed rule.

G. Removal of Previously—Disapproved Rules

1. Disapproved Provision at 30 CFR 950.12(a)(6), Vegetative Cover and Total Ground Cover

In response to the disapproved provision at 30 CFR 950.12(a)(6), Wyoming proposes to delete the reference to ''total ground cover'' and add the term ''absolute total'' to the phrase ''vegetative cover'' in Chapter 4, Section 2(d)(ii)(B)(I), which is revised text from Chapter 4, Section 2(d)(x) in the currently approved rules. In its SOPR, Wyoming states that ''absolute total'' is added to vegetative cover to provide precise language for the vegetation cover parameter that is the standard and does not change the parameter currently used to evaluate revegetation success. Conversely, Wyoming notes that the phrase ''total ground cover'' is deleted because this parameter does not provide information on the successful establishment of vegetation on reclamation. Wyoming continues that its proposed rule change addresses the aforementioned disapproval set forth in a November 24, 1986, **Federal Register** notice (51 FR 42213) regarding Wyoming's definition of cover wherein the Director of OSMRE found that inclusion of litter and rock in the definition rendered the Wyoming program less effective than the Federal regulations. Wyoming maintains that specifying total vegetative cover makes its regulations consistent with Federal regulations.

Wyoming's proposed revision adds specificity to its rules concerning successful establishment of vegetation cover requirements and clarifies that prior to bond release, the vegetative cover of reclaimed areas will be at least equal to that of the natural vegetation of the area consistent with the Federal regulations at 30 CFR 816/817.111(a)(3). For these reasons, we are removing the program disapproval at 30 CFR 950.12(a)(6).

2. Disapproved Provision at 30 CFR 950.12(a)(7), Alternative Success Standards Approved by the Administrator

In response to the disapproved provision at 30 CFR 950.12(a)(7), Wyoming proposes to delete language in proposed Chapter 4, Section 2(d)(i)(G) and 2(d)(ii)(B)(I), which is revised text from Chapter 4, Section 2(d)(x) in the currently approved rules, that allows the use of unspecified alternative success standards when approved by the Administrator. In both cases, Wyoming references the aforementioned disapproval set forth in a November 24, 1986, **Federal Register** notice (51 FR 42213) which stated that the Federal regulations at 30 CFR 816/817.116(a)(1) require that success standards be included in an approved regulatory program, and the preamble to the Federal regulations clarifies that standards are to be subject to public review and comment. Therefore, the Director could not approve language allowing alternative success standards in the absence of an explanation as to what the standards were, and how the operator's success in attaining them would be evaluated.

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR 816/817.116(a)(1) by eliminating the requirement that revegetation success standards and statistically valid sampling techniques be included in approved State regulatory programs (*See* 71 FR 51684). The revised regulation retains the requirement that the regulatory authority select revegetation success standards and statistically valid sampling techniques; and that the selected success standards and sampling techniques be put in writing and made available to the public. Nevertheless, we are approving Wyoming's proposed deletion of language allowing the Administrator to approve unspecified alternative success standards, and we are removing the program disapproval at 30 CFR 950.12(a)(7).

H. Removal of Required Amendments

1. Required Amendment at 30 CFR 950.16(f), Operator Property Interest Information

In a November 24, 1992, **Federal Register** (51 FR 42211) notice, we required Wyoming to further amend its program to include a provision comparable to that portion of the Federal regulations at 30 CFR 778.13(b) which requires that permit applications include the name, address, and telephone number of the operator if he or she is not the applicant. However, those portions of previous 30 CFR 778.13 that pertain to the identity of the applicant, operator, owners, controllers, and other persons with a role in the proposed surface coal mining operation were subsequently moved to new 30 CFR 778.11 in a **Federal Register** notice dated December 19, 2000, (65 FR 79582). As a result, 30 CFR 778.11(b)(3) now requires the applicant to provide the name, address, and telephone number for ''[A]ny operator, if different from the applicant.''

In response to the required program amendment at 30 CFR 950.16(f), Wyoming proposes to revise its rules at Chapter 2, Section 2(a)(i)(B) by adding substantively identical language that requires applicants for coal mining permits to provide a complete identification of interests including the names, addresses, and telephone numbers of any operators, if different from the applicant. Wyoming explains in its SOPR that the proposed rule was also revised to require the phone numbers for the other business interests which may be involved with the mining operation.

Wyoming's proposed language requiring that permit applications for coal mining include the name, address, and telephone numbers of operators affiliated with an applicant makes its rules consistent with and no less effective than the Federal counterpart provision at 30 CFR 778.11(b)(3), and we are removing the required program amendment at 30 CFR 950.16(f).

2. Required Amendment at 30 CFR 950.16(l), Operator Sampling Techniques for Evaluating Ground Cover Parameters

In a November 24, 1986, **Federal Register** (51 FR 42212) notice, we stated that while Appendix A provides general and often detailed guidance on sampling concepts and data analysis, it fails to identify the sampling techniques that are required to be included as part of an approved program by 30 CFR 816/817.116(a) (1). Therefore, to be no less effective than the Federal regulations, we required Wyoming to revise Appendix A to prescribe the specific techniques which operators can use to evaluate revegetation success.

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR 816/817.116(a)(1) by eliminating the requirement that revegetation success standards and statistically valid sampling techniques be included in approved State regulatory programs (*See* 71 FR 51684). However, the revised regulation continues to require that standards for success and sampling techniques for measuring success must still be selected by the regulatory authority, and shall be described in writing and made available to the public.

As a result of OSMRE's August 30, 2006, rule change, Wyoming proposes to remove provisions regarding operator sampling techniques for evaluating ground cover parameters from its rules in Appendix A, Part II. B. In addition, Wyoming indicates in its SOPR that rules for sampling and statistical methods that had previously been developed for inclusion into Chapter 4 will now be incorporated into the Administrator's Approved Sampling and Statistical Methods document.

Based on the foregoing, we have determined that Wyoming's program is consistent with and no less effective than the revised Federal regulations at 30 CFR 816/817.116(a)(1). Moreover, OSMRE's August 30, 2006, rule change renders the required program amendment at 30 CFR 950.16(l) moot and we are removing it.

Somewhat related to the finding above is Wyoming's proposal to remove language from its rules in Appendix A, Part 2 C. 1.a. regarding the use of ocular quadrat methods for estimating species, vegetation, and total ground cover. OSMRE previously approved the removal of required program amendment 30 CFR 950.16(k) in a May 8, 2003, **Federal Register** (68 FR 24647, 24653) notice pertaining to the aforementioned rule language. Therefore, we are merely acknowledging Wyoming's proposed deletion in this finding.

3. Required Amendment at 30 CFR 950.16(m), Cropland Success Standards

In the November 24, 1986, **Federal Register** (51 FR 42213) notice, we required Wyoming to amend its program to be no less effective than the Federal regulations at 30 CFR 816/817.116(c)(3) which held that in areas of 26.0 inches or less average annual precipitation, production standards must be met for at least the last two consecutive years of the ten-year minimum responsibility period, and not any two consecutive crop years within that period as provided by Appendix A of Wyoming's rules.

On August 30, 2006, OSMRE revised the Federal regulations at 30 CFR 816/817.116(c)(3)(i) for semi-arid areas to require that the vegetation parameters identified in 816.116(b) for grazing land, pasture land, or cropland must equal or exceed the approved success standard during the growing season of any two years after year six of the responsibility period (*See* 71 FR 51700).

As a result of OSMRE's August 30, 2006, rule change, Wyoming proposes to move text from Chapter 4, Section 2(d)(x)(I) of its current rules with revision to proposed Chapter 4, Section 2(d)(ii)(C)(II) by replacing the ''two consecutive crop year'' language with the requirement that revegetation success standards for cropland be demonstrated for two out of four years of the bond responsibility period, starting no sooner than year seven. Wyoming notes in its SOPR that the required amendment at 30 CFR 950.16(m) has not been revised to account for the OSM rule change, and still requires that ''Wyoming shall submit revisions to clarify that operators must meet cropland success standards during at least the last two consecutive crop years of the responsibility period.'' Wyoming further states that, in anticipation of changes to the required amendment, it has revised its rule to allow measurements two out of four years, starting year seven, to be consistent with new OSM rules.

Based on the discussion above, we have determined that Wyoming's program is consistent with and no less effective than the revised Federal regulations at 30 CFR 816/817.116(c)(3)(i). In addition, OSMRE's August 30, 2006, rule change renders the required program amendment at 30 CFR 950.16(m) moot and we are removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record Document ID No. OSM–2009–0012–0001). We received comments from one State Agency.

The Wyoming Game and Fish Department commented in a March 11, 2010, letter that it reviewed the proposed amendment and had no terrestrial or aquatic resource concerns at this time (Administrative Record Document ID No. OSM–2009–0012–0005).

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 Wyoming program (Administrative Record Document ID No. OSM–2009–0012–0011). We received comments from three Federal Agencies.

The Natural Resources Conservation Service (NRCS) commented in a November 23, 2009 letter (Administrative Record Document ID No. OSM–2009–0012–0002), the Mine Safety and Health Administration (MSHA) commented in a December 7, 2009 letter (Administrative Record Document ID No. OSM–2009–0012–0003), and the Bureau of Land Management (BLM) commented in a December 16, 2009 letter (Administrative Record No. WY–43–6).

The NRCS commented that, starting at Chapter 5, the document begins to refer to NRCS as the ''U.S. Soil Conservation Service,'' and suggested that necessary changes be made to the document to reflect the agency's current name of NRCS or the Natural Resources Conservation Service. In response we note that, other than Wyoming's proposal to revise its rules at Chapter 5, Section 2(b)(iii) regarding prime farmlands, no other changes are proposed in the chapter. Nevertheless, we acknowledge the NRCS's comments and are alerting Wyoming of the need to make these corrections by virtue of this **Federal Register** final rule notice.

MSHA responded that it reviewed the proposed changes to the Wyoming Reclamation Program and had no comments or concerns.

The BLM submitted several comments on Wyoming's amendment and stated that most of the changes appear to be editorial providing clarification, or are updates to current requirements to comply with OSM standards, with no significant changes in policy or clear deletions of prior requirements. In response to BLM's comments that are editorial or grammatical in nature, as well as those related to previously-approved rules that have merely been recodified or are not proposed for revision, we note that we can only speak to the establishment of regulatory requirements and determine whether the proposed amendment is in accordance with SMCRA and the Federal regulations. Therefore, we will only address substantive comments to Wyoming's proposed rules that specifically allege inconsistencies and conflicts with SMCRA and/or the Federal regulations.

BLM's substantive comments primarily concern Federal land management agency concurrence and consultation where Federal surface lands are involved with coal mining operations. Specifically, the BLM stated that overall it appears that the rule revisions provide the Administrator of the State Land Quality Division with considerable authority/discretion/flexibility in determining what will define successful reclamation revegetation and how it will be measured.

For example, in Chapter 1, Section 2(dl)(i), ''comparison areas'' must be approved by the Administrator and in Section 2(er), ''substantially affect'' is determined by the Administrator. BLM continues that, while this may be acceptable on State or private land reclamation projects, it is crucial that the rules revision state that all reclamation (including revegetation) plans that involve Federal surface are subject to approval by the managing agency; otherwise, the BLM believes there would be a potential for conflict. BLM also comments that the bond release requirements have been substantially updated and notes that it is important that the affected BLM office

concurs in setting the amount and in releasing reclamation bonds on BLM surface.

Lastly, with respect to Wyoming's proposed rule changes at Chapter 2, Section 6(b)(iii)(B and C) and Chapter 4, Sections 2(d)(ii)(B)(II)(2)(d) and (D), BLM states that for Federally owned surface, the managing agency should be consulted as well as the Wyoming Game and Fish Department for tree and shrub species composition, ground cover, and minimum stocking and planting arrangements.

For the reasons that follow, BLM's concerns regarding Federal land management agency concurrence and consultation where Federal surface lands are involved with coal mining operations are currently addressed, and do not warrant additional rulemaking by Wyoming. In particular, we refer BLM to the Federal Lands Program provisions set forth at 30 CFR Subchapter D, Part 740 and the Wyoming State/Federal Cooperative Agreement at 30 CFR 950.20 Article V, Policies and Procedures: Permit Application Package Review. 30 CFR 740.4(c)(2) and (3) and 740.13(c)(5) specifically address OSMRE and State Regulatory Authority requirements regarding consultation with and obtaining the consent, as necessary, of the Federal land management agency with respect to post-mining land use and permit review and processing.

In addition, 30 CFR 740.4(c)(4) requires Federal land management agency concurrence when approving or releasing Federal lessee protection bonds. While these provisions are not found in Wyoming's approved rules, Article V, Section 9 of the State/Federal Cooperative Agreement delineates the respective responsibilities that OSMRE and Wyoming shall assume under 30 CFR 740.4(c). Lastly, we note that 30 CFR 740.4(e)(1) states that ''The Federal land management agency is responsible for: determining post-mining land uses.'' These Federal rules and accompanying Cooperative Agreement ensure that the requirements regarding consultation with and consent by the Federal land management agency where Federal surface lands are involved with coal mining operations will be adhered to.

Similar to the comments above, BLM quotes Wyoming's proposed rule at Chapter 2, Section 6(b)(iii)(E)(VIII) which states ''For Federally owned surface, the Federal land managing agency shall be consulted for mulching requirements and seeding requirements for cover crops, temporary and permanent reclamation.'' BLM comments that it sounds like the Land Quality Division will consult with the Federal agency only in regards to cover crops, and asserts that it should be clear that the Federal agency will be consulted for mulching and seeding requirements for both cover crops and the intended permanent vegetation for reclamation. BLM continues that if this is not clarified, they foresee a potential problem with the use of non-native/unapproved seeds or seeds not certified weed-free for revegetation on public lands, which would not follow the BLM/policy rules.

We disagree with BLM's interpretation and read Wyoming's proposed rule to require that the Federal land managing agency will be consulted for mulching and seeding requirements for both cover crops and the intended temporary and permanent vegetation for reclamation. We refer BLM to Finding No. III.F.8. for an explanation as to why proposed Chapter 2, Section 6(b)(iii)(E)(VIII) is being approved.

The BLM provided several specific comments in response to Wyoming's proposed rule changes in Chapter 1. First, BLM inquired whether Wyoming's existing definition of ''Best technology currently available'' at Chapter 1, Section 2(o) can be combined with the newly-proposed definition of ''Best practicable technology'' at Chapter 1, Section 2(n). In response, we note that these definitions are mutually exclusive to the extent that the definition of ''Best technology currently available'' applies only to erosion control and fish and wildlife enhancement measures, while ''Best practicable technology'' relates to shrub establishment.

BLM also asked that we explain the significance of the August 6, 1996, date in Wyoming's definition of ''eligible land'' at Chapter 1, Section 2(am). In response, we note that August 6, 1996, is the date on which OSMRE approved Wyoming's definition of ''eligible land'' and signifies that land affected by a mining operation after that date is eligible for shrub reclamation.

BLM commented that Wyoming's newly-proposed definition of ''Sample unit'' at Chapter 1, Section 2(ds) should define a minimum acreage. The proposed definition provides additional specificity as neither SMCRA nor the Federal regulations define ''sample unit.'' Moreover, the definition of the size of the sample unit is to be established by mutual agreement between the permittee and the Administrator. For these reasons, we will defer to the State with regard to determining the size of a particular sample unit.

With respect to Wyoming's proposed rule change at Chapter 2, Section 1(c), General Permit Application Requirements, BLM commented that the 1:24,000 scale requirement for maps be restored. We agree with BLM's comment and refer it to Finding No. III.E.8. BLM also commented that Wyoming's newly-proposed rule at Chapter 2, Section 3(c)(ii) should also have a scale detail requirement for mapping of vegetation communities. In response, we note that because Wyoming has committed to reinstate the 1:24,000 scale requirement for maps in its rules at Chapter 2, Section 1(c), the same requirement is unnecessary for mapping of vegetation communities. In addition, the Federal counterpart provision at 30 CFR 779.19(a) does not include such a requirement.

Next, BLM referenced Wyoming's proposed rule change at Chapter 4, Section 2(c)(xii)(D)(II) and commented that it is unclear whether the discretion of the Administrator applies only to designing an impoundment for a storm duration having greater peak flow than the runoff from the probable maximum precipitation of a 6-hour precipitation event, or to the probable maximum precipitation of a 6-hour precipitation event itself. BLM further noted that there should be a minimum standard that is not subject to the discretion of the Administrator. In response, we refer BLM to Finding No. III.E.14. for an explanation as to why the proposed rule is being approved and how it is to be interpreted.

Finally, the BLM stated that the five acre threshold for repairs of erosional features, subsidence, or settling in proposed Chapter 4, Section 2(d)(M)(X) seems fairly large to consider as a ''normal husbandry practice'' that avoids resetting the bond clock. We disagree with this comment and refer BLM to Finding No. III.E.15.G. for an explanation as to why the five acre limit is being approved. The commenter is also reminded that all mined lands must meet revegetation success standards prior to final bond release.

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.*).

Under 30 CFR 732.17(h)(11)(i), OSMRE requested comments on the amendment from EPA (Administrative Record Document ID No. OSM–2009–0012–0011). 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 August 4, 2010, we requested comments on Wyoming's amendment (Administrative Record Document ID No. OSM–2009–0012–0012). The SHPO responded on September 2, 2010, and explained that in reviewing the cultural resources section of the document [specifically Chapter 2, Section 4(a)(xvii) and Section 4(a)(xviii), and Chapter 2, Section 5(a)(xix)], it is apparent that the Wyoming DEQ/LQD rules are not consistent with, nor are they as stringent or effective as, the regulations implementing Section 106 of the National Historic Preservation Act (NHPA) found at 36 CFR Part 800 (Administrative Record Document ID No. OSM–2009–0012–0013). SHPO further recommended that OSMRE retain its responsibilities under Section 106 of the NHPA pursuant to 30 CFR Part 800 until such time as the [state] rules can be made consistent with, and as stringent and effective as, the Federal regulations.

Notwithstanding our disapproval of Wyoming's proposed rule change at Chapter 2, Section 4(a)(xvii) for different reasons in Finding No. III.E.10 above, which was specifically submitted in response to a required program amendment at 30 CFR 950.16(u) concerning public availability of permit applications and confidentiality, we concur with the SHPO's acknowledgement in its response that the purpose of the amendment is not to make adjustments concerning compliance with Section 106 of the NHPA. Although the aforementioned comments are beyond the scope of this amendment and differ from the context in which the proposed rule change was submitted, we recognize the SHPO's concerns and are alerting Wyoming to them by virtue of this **Federal Register** final rule notice.

V. OSMRE's Decision

Based on the above findings, we approve, with certain exceptions, Wyoming's October 15, 2009, amendment. We do not approve the following provisions or parts of provisions.

As discussed in Finding No. III.E.6, we are not approving Wyoming's proposed rule changes deleting the definition of ''surface coal mining and reclamation operations'' at Chapter 1, Section 2(ct), and removing the term ''surface'' throughout its rules in Chapters 1, 2, 4, and 5.

As discussed in Finding No. III.E.8, we are not approving Wyoming's proposed rule change deleting the 1:24,000 scale requirement at Chapter 2, Section 1(c) for maps that are submitted with permit applications.

As discussed in Finding No. III.E.10, we are not approving Wyoming's proposed rule change at Chapter 2, Section 4(a)(xvii), concerning public availability of permit applications and confidentiality, and the required amendment at 30 CFR 950.16(u) remains outstanding.

As discussed in Finding No. III.E.11, we do not accept Wyoming's explanation for not revising or amending its rules at Chapter 2, Section 5(a)(viii)(A) concerning fish and wildlife enhancement measures, and the required amendment at 30 CFR 950.16(p) remains outstanding.

As discussed in Finding No. III.E.15, we are not approving Wyoming's proposed normal husbandry practice for supplemental planting of tree and shrub stock at Chapter 4, Section 2(d)(i)(M)(II).

We are removing existing required amendments and approving, as discussed in: Finding No. III.H.1, Chapter 2, Section 2(a)(i)(B), concerning operator property interest information; Finding No. III.H.2, Appendix A, Part II. B, concerning operator sampling techniques for evaluating ground cover parameters; and Finding No. III.H.3, Chapter 4, Section 2(d)(ii)(C)(II), concerning cropland success standards.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 950, which codify decisions concerning the Wyoming 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.

Effect of OSMRE's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSMRE for review as a program amendment. The Federal regulations at 30 CFR 732.17(g) prohibits any changes to approved State programs that are not approved by OSMRE. In the oversight of the Wyoming program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Wyoming to enforce only approved provisions.

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 OSMRE. 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 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), 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 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 2011.

Allen D. Klein,

Regional Director, Western Region.

Editorial Note: This document was received in the Office of the Federal Register on June 6, 2011.

For the reasons set out in the preamble, 30 CFR part 950 is amended as set forth below:

PART 950—WYOMING

■ 1. The authority citation for part 950 continues to read as follows:

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

■ 2. Section 950.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 950.15 Approval of Wyoming regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	*
October 15, 2009	June 14, 2011	Chap. 1, Section 2(f); Chap. 1, Section 2(j); Chap. 1, Section 2(k); Chap. 1, Section 2(l); Chap. 1, Section 2(m); Chap. 1, Section 2(n); Chap. 1, Section 2(p); Chap. 1, Section 2(r); Chap. 1, Section 2(s); Chap. 1, Section 2(z); Chap. 1, Section 2(aa); Chap. 1, Section 2(ab); Chap. 1, Section 2(ae); Chap. 1, Section 2(ak); Chap. 1, Section 2(am); Chap. 1, Section 2(ao);

Original amendment submission date	Date of final publication	Citation/description
		Chap. 1, Section 2(ap); Chap. 1, Section 2(as); Chap. 1, Section 2(az); Chap. 1, Section 2(bd); Chap. 1, Section 2(be); Chap. 1, Section 2(bf); Chap. 1, Section 2(bg); Chap. 1, Section 2(bm); Chap. 1, Section 2(bs); Chap. 1, Section 2(bu); Chap. 1, Section 2(bv); Chap. 1, Section 2(by)(ii); Chap. 1, Section 2(bz); Chap. 1, Section 2(ca); Chap. 1, Section 2(cb); Chap. 1, Section 2(cc); Chap. 1, Section 2(cg); Chap. 1, Section 2(cj); Chap. 1, Section 2(cl); Chap. 1, Section 2(cm); Chap. 1, Section 2(co); Chap. 1, Section 2(cs); Chap. 1, Section 2(cu); Chap. 1, Section 2(cx); Chap. 1, Section 2(da); Chap. 1, Section 2(df); Chap. 1, Section 2(dg); Chap. 1, Section 2(dh); Chap. 1, Section 2(di); Chap. 1, Section 2(dl); Chap. 1, Section 2(dm); Chap. 1, Section 2(dp); Chap. 1, Section 2(ds); Chap. 1, Section 2(dt); Chap. 1, Section 2(dv); Chap. 1, Section 2(dw); Chap. 1, Section 2(dx); Chap. 1, Section 2(dy); Chap. 1, Section 2(dz); Chap. 1, Section 2(ef); Chap. 1, Section 2(eg); Chap. 1, Section 2(el); Chap. 1, Section 2(eo); Chap. 1, Section 2(es); Chap. 1, Section 2(eu); Chap. 1, Section 2(ex); Chap. 1, Section 2(ey); Chap. 1, Section 2(ez); Chap. 1, Section 2(fe); Chap. 1, Section 2(ff); Chap. 1, Section 2(fm); Chap. 1, Section 2(fn); Chap. 2, Section 2(b)(iv)(C); Chap. 2, Section 2(c)(xii)(D)(II); Chap. 2, Section 3(a)-(m); Chap. 2, Section 6(b)(iii)(D); Chap. 2, Section 6(b)(iii)(E)(VIII); Chap. 2, Section 6(b)(iii)(G); Chap. 4, Section 2(c)(xii)(D)(II) Chap. 4, Section 2(d)(i)(G); Chap. 4, Section 2(d)(i)(I); Chap. 4, Section 2(d)(i)(M)(I) and (III)–(XI); Chap. 4, Section 2(d)(i)(N); Chap. 4, Section 2(g)(iv)(L) Chap. 4, Section 2(g)(iv)(M); Chap. 4, Section 2(g)(v)(A); Chap. 4, Section 2(g)(v)(B); Chap. 5, Section 2(b) (iii); also all minor, editorial, and codification changes and all reorganized or relocated rules.

§ 950.16 [Amended]

■ 3. Section 950.16 is amended by removing and reserving paragraphs (f), (l), and (m).

[FR Doc. 2011–14310 Filed 6–13–11; 8:45 am]

BILLING CODE 4310–05–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 114 June 14, 2011

Part III

The President

Executive Order 13575—Establishment of the White House Rural Council

Federal Register
Vol. 76, No. 114
Tuesday, June 14, 2011

Presidential Documents

Title 3—

The President

Executive Order 13575 of June 9, 2011

Establishment of the White House Rural Council

By the authority vested in me as President by the Constitution and the laws of the United States of America and in order to enhance Federal engagement with rural communities, it is hereby ordered as follows:

Section 1. *Policy.* Sixteen percent of the American population lives in rural counties. Strong, sustainable rural communities are essential to winning the future and ensuring American competitiveness in the years ahead. These communities supply our food, fiber, and energy, safeguard our natural resources, and are essential in the development of science and innovation. Though rural communities face numerous challenges, they also present enormous economic potential. The Federal Government has an important role to play in order to expand access to the capital necessary for economic growth, promote innovation, improve access to health care and education, and expand outdoor recreational activities on public lands.

To enhance the Federal Government's efforts to address the needs of rural America, this order establishes a council to better coordinate Federal programs and maximize the impact of Federal investment to promote economic prosperity and quality of life in our rural communities.

Sec. 2. *Establishment.* There is established a White House Rural Council (Council).

Sec. 3. *Membership.* (a) The Secretary of Agriculture shall serve as the Chair of the Council, which shall also include the heads of the following executive branch departments, agencies, and offices:

(1) the Department of the Treasury;

(2) the Department of Defense;

(3) the Department of Justice;

(4) the Department of the Interior;

(5) the Department of Commerce;

(6) the Department of Labor;

(7) the Department of Health and Human Services;

(8) the Department of Housing and Urban Development;

(9) the Department of Transportation;

(10) the Department of Energy;

(11) the Department of Education;

(12) the Department of Veterans Affairs;

(13) the Department of Homeland Security;

(14) the Environmental Protection Agency;

(15) the Federal Communications Commission;

(16) the Office of Management and Budget;

(17) the Office of Science and Technology Policy;

(18) the Office of National Drug Control Policy;

(19) the Council of Economic Advisers;

(20) the Domestic Policy Council;

(21) the National Economic Council;

(22) the Small Business Administration;

(23) the Council on Environmental Quality;

(24) the White House Office of Public Engagement and Intergovernmental Affairs;

(25) the White House Office of Cabinet Affairs; and such other executive branch departments, agencies, and offices as the President or the Secretary of Agriculture may, from time to time, designate.

(b) A member of the Council may designate, to perform the Council functions of the member, a senior-level official who is part of the member's department, agency, or office, and who is a full-time officer or employee of the Federal Government.

(c) The Department of Agriculture shall provide funding and administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) The Council shall coordinate its policy development through the Domestic Policy Council and the National Economic Council.

Sec. 4. *Mission and Function of the Council.* The Council shall work across executive departments, agencies, and offices to coordinate development of policy recommendations to promote economic prosperity and quality of life in rural America, and shall coordinate my Administration's engagement with rural communities. The Council shall:

(a) make recommendations to the President, through the Director of the Domestic Policy Council and the Director of the National Economic Council, on streamlining and leveraging Federal investments in rural areas, where appropriate, to increase the impact of Federal dollars and create economic opportunities to improve the quality of life in rural America;

(b) coordinate and increase the effectiveness of Federal engagement with rural stakeholders, including agricultural organizations, small businesses, education and training institutions, health-care providers, telecommunications services providers, research and land grant institutions, law enforcement, State, local, and tribal governments, and nongovernmental organizations regarding the needs of rural America;

(c) coordinate Federal efforts directed toward the growth and development of geographic regions that encompass both urban and rural areas; and

(d) identify and facilitate rural economic opportunities associated with energy development, outdoor recreation, and other conservation related activities.

Sec. 5. *General Provisions.* (a) The heads of executive departments and agencies shall assist and provide information to the Council, consistent with applicable law, as may be necessary to carry out the functions of the Council. Each executive department and agency shall bear its own expense for participating in the Council.

(b) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to an executive department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

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

THE WHITE HOUSE,
June 9, 2011.

[FR Doc. 2011–14919
Filed 6–13–11; 11:15 am]
Billing code 3195–W1–P

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H.R. 754/P.L. 112–18

Intelligence Authorization Act for Fiscal Year 2011 (June 8, 2011; 125 Stat. 223)

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