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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM33

Prevailing Rate Systems; Redefinition of the Northeastern Arizona and Southern Colorado Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the Northeastern Arizona and Southern Colorado appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Dolores, Montrose, Ouray, San Juan, and San Miguel Counties, CO, and the Curecanti National Recreation Area portion of Gunnison County, CO, from the Southern Colorado wage area to the Northeastern Arizona wage area. These changes are based on consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the above counties to a nearby FWS survey area.

DATES: This regulation is effective on August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Madeline Gonzalez, (202) 606–2838; e-mail *pay-leave-policy@opm.gov*; or *Fax:* (202) 606–4264.

SUPPLEMENTARY INFORMATION: On February 22, 2011, the U.S. Office of Personnel Management (OPM) issued a proposed rule (76 FR 9694) to redefine Dolores, Montrose, Ouray, San Juan, and San Miguel Counties, CO, and the Curecanti National Recreation Area portion of Gunnison County, CO, from the Southern Colorado wage area to the Northeastern Arizona wage area. The proposed rule had a 30-day comment period during which OPM received no comments.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended these changes by consensus. FPRAC recommended no other changes in the geographic definitions of the Northeastern Arizona and Southern Colorado wage areas.

CFR Correction

In addition, this final rule deletes Pitkin County, CO, as an area of application county in the Southern Colorado wage area. OPM redefined Pitkin County as part of the area of application of the Denver, CO, wage area in a final rule published in 2000 (65 FR 26119). However, Pitkin County continues to incorrectly appear listed as an area of application county in the Southern Colorado wage area. The Denver wage area correctly lists Pitkin County as one of its area of application counties.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Appendix C to subpart B is amended by revising the wage area listings for the Northeastern Arizona and Southern Colorado wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

ARIZONA

Northeastern Arizona
Survey Area

Arizona:
- Apache
- Coconino
- Navajo

New Mexico:
- McKinley
- San Juan

Area of Application. Survey area plus:

Colorado:
- Dolores
- Gunnison (Only includes the Curecanti National Recreation Area portion)
- La Plata
- Montezuma
- Montrose
- Ouray
- San Juan
- San Miguel

Utah:
- Kane
- San Juan (Does not include the Canyonlands National Park portion)

* * * * *

Colorado

* * * * *

Southwestern Colorado
Survey Area

Colorado:
- El Paso
- Pueblo
- Teller

Area of Application. Survey area plus:

Colorado:
- Alamosa
- Archuleta
- Baca
- Bent
- Chaffee
- Cheyenne
- Conejos
- Costilla
- Crowley
- Custer
- Delta
- Fremont
- Gunnison (Does not include the Curecanti National Recreation Area portion)
- Hinsdale
- Huerfano
- Kiowa
- Kit Carson
- Las Animas
- Lincoln
- Mineral
- Otero
- Prowers
- Rio Grande

Saguache

* * * * *

[FR Doc. 2011–18533 Filed 7–21–11; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. APHIS–2010–0127]

RIN 0579–AD34

Movement of Hass Avocados From Areas Where Mediterranean Fruit Fly or South American Fruit Fly Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to relieve certain restrictions regarding the movement of fresh Hass variety avocados. Specifically, we are amending our domestic regulations to provide for the interstate movement of Hass avocados from Mediterranean fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We are also amending our foreign quarantine regulations to remove trapping requirements for Mediterranean fruit fly for Hass avocados imported from the State of Michoacán, Mexico, requirements for treatment or origin from an area free of Mediterranean fruit fly for Hass avocados imported from Peru, and requirements for trapping or origin from an area free of South American fruit fly for Hass avocados imported from Peru. These actions are warranted in light of research demonstrating the limited host status of Hass avocados to Mediterranean fruit fly and South American fruit fly. By amending both our domestic and foreign quarantine regulations, we are making them consistent with each other and relieving restrictions for Mexican and Peruvian Hass avocado producers. In addition, this action provides a means for Hass avocados to be moved interstate if the avocados originate from a Mediterranean fruit fly quarantined area in the United States.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Román, Import Specialist, Regulations, Permits, and Manuals, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 734–0627.

SUPPLEMENTARY INFORMATION:

Background

The domestic fruit fly regulations, contained in 7 CFR 301.32 through 301.32–10 (referred to below as the domestic regulations), were established to prevent the spread of certain fruit fly species, including *Ceratitis capitata* (Mediterranean fruit fly), into noninfested areas of the United States. The regulations designate soil and many fruits, nuts, vegetables, and berries as regulated articles and impose restrictions on the interstate movement of those regulated articles from regulated areas.

Avocado, *Persea americana* (including the variety Hass), is listed as a regulated article for Mediterranean fruit fly, melon fruit fly (*Bactrocera cucurbitae*), Mexican fruit fly (*Anastrepha ludens*), Oriental fruit fly (*Bactrocera dorsalis*), peach fruit fly (*Anastrepha zonata*), and sapote fruit fly (*Anastrepha serpentina*) in the regulations. Because avocados are listed as regulated articles, they may not be moved interstate from an area quarantined for one of those fruit flies unless the movement is authorized by a certificate or limited permit. In general, avocados may be eligible for a certificate if a bait spray is applied to the production site beginning prior to harvest and continuing through the end of harvest or if a post-harvest irradiation treatment is applied to the fruit. To be eligible for a limited permit, a regulated article must be moved to a specific destination for specialized handling, utilization, or processing or for treatment and meet all other applicable provisions of the regulations. For Hass avocados moving interstate from any Mexican fruit fly or sapote fruit fly quarantined area, the avocados may be moved interstate under certificate if the fruit is safeguarded after harvest in accordance with specific measures set out in § 301.32–4(d). We have determined that Hass avocados are a host for Mexican fruit fly and sapote fruit fly only after harvest; these measures are designed to prevent Hass avocados harvested in a quarantined area from being infested with these fruit flies after harvest. Avocados handled in accordance with these measures are thus allowed to move from the quarantined area without further restriction under the certificate.

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–50, referred to below as the import regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests that are new to or not widely distributed within the United States.

The requirements for importing Hass variety avocados into the United States from Michoacán, Mexico, are described in § 319.56–30. Those requirements include pest surveys and pest risk-reducing practices, treatment, packinghouse procedures, inspection, and shipping procedures. Although Mediterranean fruit fly is not known to be present in Michoacán, Mexico, the regulations require that trapping be conducted for Mediterranean fruit fly and that any fruit fly finds are reported to the Animal and Plant Health Inspection Service (APHIS).

The regulations in § 319.56–50 allow the importation into the continental United States of Hass avocados from Peru provided, among other things, that the avocados originate from an area free of Mediterranean fruit fly or that the avocados have been treated for Mediterranean fruit fly in accordance with our phytosanitary treatment regulations in 7 CFR part 305. In addition, the regulations in § 319.56–50 require that the avocados must either originate from an area within Peru that is free of South American fruit fly or an area with low pest prevalence for South American fruit fly and where trapping for South American fruit fly is conducted.

On April 4, 2011, we published in the **Federal Register** (76 FR 18419–18421, Docket No. APHIS–2010–0127) a proposal [1] to amend our domestic quarantine regulations to provide for the interstate movement of Hass avocados from Mediterranean fruit fly quarantined areas in the United States with a certificate if the fruit is safeguarded after harvest in accordance with specific measures. We also proposed to amend our foreign quarantine regulations to remove trapping requirements for Mediterranean fruit fly for Hass avocados imported from Michoacán, Mexico, the treatment requirements and origin restrictions for Mediterranean fruit fly for imported Hass avocados from Peru, and the trapping requirements and origin restrictions for South American fruit fly for imported Hass avocados from Peru. These proposed actions were intended to make our domestic and foreign requirements for movement of Hass avocados consistent with each other, relieve restrictions for Mexican and Peruvian

[1] To view the proposed rule, the commodity import evaluation document, and the comments we received, go to *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2010-0127.*

Hass avocado producers, and provide an alternative means for Hass avocados to be moved interstate if the avocados originate from a Mediterranean fruit fly quarantined area in the United States.

We solicited comments concerning our proposal for 30 days ending May 4, 2011. We reopened and extended the deadline for comments until May 18, 2011, in a document published in the **Federal Register** on May 9, 2011 (76 FR 26654–26655). We received 30 comments by that date. They were from private citizens, customs brokers, trade associations, a State department of agriculture, growers, industry groups, chambers of commerce, ports, and foreign governments. The majority of commenters supported the proposed rule. Several commenters submitted comments that were not germane to the rule. The issues raised by the other commenters are discussed below.

One commenter stated that, because Hass avocados have been proven to be limited hosts for South American fruit fly and Mediterranean fruit fly, APHIS should relieve movement restrictions on Hass avocados from all countries with Mediterranean fruit fly and South American fruit fly that ship Hass avocados to the United States. The commenter stated that this would fulfill our bilateral and multilateral sanitary and phytosanitary agreements.

Currently, Hass avocados are allowed entry into the United States from the State of Michoacán, Mexico, and Peru under the regulations in §§ 319.56–30 and 319.56–50, respectively. In addition, Hass avocados are allowed entry into the United States from Chile administratively, provided that the avocados originate from an area free of the Mediterranean fruit fly or that the avocados have been treated by either cold treatment or fumigation with methyl bromide. Because we recognize Chile as free of Mediterranean fruit fly and South American fruit fly, we did not mention Chile in our proposed rule; however, we are also relieving movement restrictions on Hass avocados from Chile due to Mediterranean fruit fly, should Mediterranean fruit fly be reintroduced to Chile. In the event that another country where Mediterranean fruit fly and South American fruit fly are present is authorized to export Hass avocados to the United States, we will not impose movement restrictions associated with those fruit flies, except for post-harvest safeguarding as described in the proposed rule.

One commenter expressed concern that Peru's research protocol and findings, particularly with respect to the host status of Hass avocados for South American fruit fly, were not subjected to peer review. The commenter further stated that the NPPO of Peru should conduct additional experiments to test host susceptibility to South American fruit fly using fruit of varying degrees of maturity from stressed trees. The commenter cited the abandonment of the regulatory protocol allowing the movement of Sharwil variety avocados from Hawaii to the continental United States due to repeated finds of Oriental fruit fly larva within avocado fruit during drought conditions.

While Peru's report on the host status of Hass avocado for South American fruit fly was not peer-reviewed, their research corroborated current literature, including peer-reviewed research conducted by Martin Aluja *et al.*,[2] concluding that, under most circumstances, Hass avocados are generally poor hosts for *Anastrepha* spp. fruit flies. As stated in the commodity import evaluation document published in connection with the proposed rule, APHIS does not consider South American fruit fly to infest Hass avocados in Mexico, but we included it in the pest list for Hass avocados from Peru due to a lack of host records and data. Peru subsequently conducted a study on host status and came to the conclusion that Hass avocados in Peru are not hosts to South American fruit fly. As stated in our commodity import evaluation document, the main risk of fruit fly infestation is from avocado fruit outside of the normal population, *i.e.,* fruit that is left to become overripe on the tree, injured or damaged fruit, fruit picked up from the ground, picked fruit left in the field for days, and fruit that is the wrong cultivar. Therefore, we have determined that Hass avocados are conditional nonhosts for Mediterranean fruit fly and South American fruit fly. We have encouraged Peru to submit the data they submitted to us regarding the host status of Hass avocado to South American fruit fly for publication in a peer-reviewed journal.

The commenter is correct that the regulatory protocol allowing Sharwil avocados to be moved to the continental United States from Hawaii was abandoned due to repeated finds of Oriental fruit fly larva within avocado fruit. However, the situation within Hawaii was fundamentally different than the situation within Peru for several reasons, not the least of which is the different fruit fly species and avocado varieties involved.

Apart from variety-host interactions, other factors indicate that the problems with interstate movement of Sharwil variety avocados are not likely to occur in Hass variety avocados. For example, the exocarp of the Hass avocado fruit provides a barrier to infestation by fruit flies that may not be offered by the exocarp of other varieties of avocados. In general, drought conditions may increase incidences of fruit fly infestation of avocados, in particular due to an increase in a specific type of peduncle damage called girdling. However, unlike Sharwil avocados in Hawaii, it has been shown that Hass avocados in Mexico that experience girdling do not reach a size conducive to export (see footnote 2). Therefore, they are not likely to be included in commercial shipments. In addition, it is unlikely that avocado trees in Peru would undergo drought stress because the avocado groves there are irrigated. Mature ripe fruit, including Hass avocados, are also more susceptible to insect infestation than immature or ''green'' fruit; the greater distance that Peruvian Hass avocados must travel to reach the United States means that mature ripe Hass avocados would not be packed for export to the United States, as they would spoil by the time they arrived on the export market.

One commenter asked what sort of oversight APHIS would have over our Hass avocado import programs and what resources will be made available to ensure that the provisions in the regulations are carried out.

As signatories to the International Plant Protection Convention, the national plant protection organizations (NPPO) of Mexico, Peru, and Chile are obligated to fulfill their responsibilities for importation of Hass avocados. In addition, we have APHIS employees stationed in countries throughout the world, including Mexico, Peru, and Chile, to monitor import program activities. We have conducted site visits as part of developing our import requirements and found the NPPOs of Mexico, Peru, and Chile to have the necessary resources and capacity to implement them. In addition, all Hass avocado shipments are subject to inspection at the port of entry, which may include fruit cutting to ensure freedom from quarantine pests. This inspection serves as a check on the effectiveness of the required mitigations.

One commenter suggested that each avocado importer provide a bond that could be used to pay for mitigating potential pest outbreaks as a result of the importation.

We do not consider such a bond requirement to be practical, largely

[2] Aluja, M., F. Diaz-Fleischer and J. Arredondo. 2004. Nonhost Status of Commercial *Persea americana* 'Hass' to *Anastrepha ludens, Anastrepha obliqua, Anastrepha serpentina,* and *Anastrepha striata* (Diptera: Tephritidae) in Mexico. J. Econ. Entomol. 97(2): 293–309.

because no country in the world requires the indemnification of agricultural products offered for importation; if the United States were to set a precedent and require such indemnification, it would be only a matter of time before our domestic agricultural producers would be required to put up similar bonds for their exports. Any grower or farmer has little control over his or her produce once it has left the grove or farm, let alone once it has been exported to another nation. Finally, requiring such indemnification would run counter to our obligations under current international trade agreements and would certainly be subject to challenge by our trading partners. For these reasons, the use of such bonds is considered impractical. In addition, as our import requirements are sufficient to mitigate the risk of pest introduction via the importation of Hass avocados, we do not believe that such a requirement would be necessary in any case.

Several commenters expressed concern regarding the impact of the proposed rule on U.S. avocado producers. One commenter pointed to a historical decrease in U.S. avocado acreage and stated that increasing U.S. regulatory constraints and water costs as well as lower-priced foreign imports have accelerated the decline in avocado acreage in recent years. The commenter further stated that lowering the costs borne by foreign producers and allowing unlimited foreign imports will drive domestic avocado producers out of business, resulting in the permanent loss of the domestic avocado industry, which will have an adverse economic effect for businesses connected with the domestic avocado industry. In addition, the commenter stated that communities in the United States where avocados are currently grown would suffer from fallowed farm land. The commenter recommended that, before additional Peruvian avocados are imported, a far-reaching and comprehensive economic impact analysis be prepared, preferably by an independent third party, to evaluate the impacts to the U.S. avocado industry and the effects of additional pressures.

While the commenter is correct that U.S. avocado acreage has declined in the past 25 years, many factors could contribute to that decline, including the increasing opportunity cost of avocado production and the conversion of avocado groves to residential or commercial lots. In addition, despite a decrease in avocado acreage, avocado production has remained approximately the same over that period. While APHIS does not place specific limits on imports of agricultural products generally, APHIS does allow imports to occur only after pest risks are investigated and appropriate mitigation measures are in place.

This rule will allow foreign producers to realize cost savings, and may increase imports. However, we have determined that the domestic avocado industry will not be significantly adversely affected by this rule. Avocados from Chile, Mexico, and Peru are currently allowed importation into the United States and, in the case of Mexico and Chile, have been allowed into the United States for a number of years. Despite this, the U.S. avocado industry is still very active and there have been no introductions of pests that can be traced to avocado imports in the United States.

APHIS does realize that additional imports may place downward pressure on domestic Hass avocado prices, but it also may mean greater availability and potentially greater demand by consumers for all avocados, imported and domestic alike.

Should domestic avocado production decline as a result of this rule, some land may be removed from avocado production. However, fallowing land implies that opportunity cost of avocado production land is zero. On the contrary, the land will be put to a use that provides the owner with the highest return, which could include noneconomic considerations. We would also like to emphasize that, by allowing imports to occur under reasonable science-based restrictions, we advocate for a more accessible world market for U.S. exports as well.

The additional areas of study suggested by the commenter are beyond the requirements of the Regulatory Flexibility Act, which requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations, and small governmental jurisdictions and to prepare and make available for public comment a regulatory flexibility analysis that describes expected impacts of a rule on small entities. In addition, we believe a study of that scope is not warranted given that this rule was not intended to allow additional avocados into the United States but to relieve restrictions, which we have deemed no longer necessary, on the importation of Hass avocados already allowed entry.

Another commenter stated that, because there are no domestic areas quarantined for the presence of Mediterranean fruit fly, it is not a benefit to U.S. producers to remove restrictions on the interstate movement of Hass avocados for Mediterranean fruit fly. The commenter further expressed concern regarding the economic impact of the rule on small entities and recommended that APHIS consult an economic report put out by the University of California, Davis, Department of Agricultural and Resource Economics, in 2004 regarding how to offset price impacts from imported avocados.

While the commenter is correct that there are currently no areas within the United States quarantined for Mediterranean fruit fly, we proposed to remove restrictions on the movement of Hass avocados due to Mediterranean fruit fly if, in the future, areas of the United States were to be quarantined for Mediterranean fruit fly. Since 2005, there have been 13 Mediterranean fruit fly outbreaks in the United States. The last outbreak of Mediterranean fruit fly in California was in 2009, and it affected avocado production areas. As stated previously, avocados from Chile, Mexico, and Peru are already allowed entry into the United States; the final rule merely relieves restrictions on the movement of Hass avocados we have determined are not necessary in light of research demonstrating the limited host status of Hass avocados to Mediterranean and South American fruit fly.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is necessary to provide relief to those persons who are adversely affected by restrictions we no longer find warranted. The shipping season for Hass avocados from Mexico, Peru, and Chile is in progress. Making this rule effective immediately will allow interested producers and others in the marketing chain to benefit during this year's shipping season. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is summarized below, regarding the economic effects of this rule on small entities. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Within the United States, avocado fruit is primarily produced in California, Hawaii, and Florida. There were approximately 8,200 farms producing avocados in those States in 2007. About 180,000 metric tons (MT) of avocados were produced annually in the United States over a 20-year period beginning in the 1990–1991 season. There is an occasional fluctuation with an occasional higher or lower production amount than other years; the variance in avocado production can be attributed to various circumstances including inclement weather.

Currently, the costs associated with the Mediterranean fruit fly mitigation measures on Hass avocados from Mexico and Peru have increased the cost of imported avocados for consumers. Removing requirements for treatment, trapping, and origin restrictions for Hass avocados from Mexico and Peru due to Mediterranean fruit fly and South American fruit fly will reduce the cost associated with mitigation for producers, and in consequence, likely lower the cost of imported avocados for U.S. consumers.

The impact of the rule on Hass avocado fruit operations in California, Hawaii, and Florida will depend on the volume and season of increased Hass avocado imports from Mexico and Peru, the volume and season of continental U.S. production, the volume and season of imports from other countries, as well as U.S. consumption and export levels. Consumer demand for avocados has increased greatly in the past decade. Imports of Hass avocados increased from 56,000 MT in 2001 to a high of 420,000 MT in 2009.

The countries affected by the mitigation treatment changes in this rule already export Hass avocados to the United States. It is worth noting that the increase in imports of Hass avocados has occurred over the last 10 years while U.S. domestic avocado production quantities and values have remained relatively stable. It would appear that the domestic market for avocados continues to expand to absorb both increasing imports and existing domestic production rather than new avocado imports displacing either domestic production or existing imports. It therefore does not appear that the current increasing level of imports has had a significant impact on a substantial number of small avocado producers or importers.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR parts 301 and 319 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 issued under Sec. 204, Title II, Public Law 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 issued under Sec. 203, Title II, Public Law 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.32–4 [Amended].

■ 2. In § 301.32–4, paragraph (d) introductory text is amended by removing the word ''Mexican'' and adding the words ''Mediterranean, Mexican,'' in its place.

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701 7772, and 7781 7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

§ 319.56–30 [Amended].

■ 4. Section 319.56–30 is amended by removing paragraph (c)(1)(iii).

■ 5. Section 319.56–50 is amended as follows:

■ a. By revising paragraphs (b)(1) and (b)(2) to read as set forth below.

■ b. By removing paragraphs (d) and (e) and redesignating paragraphs (f) through (j) as paragraphs (d) through (h), respectively.

■ c. By revising newly redesignated paragraph (g) to read as set forth below.

■ d. In newly redesignated paragraph (h) introductory text, by removing the words ''In addition:'' and by removing newly redesignated paragraphs (h)(1) through (h)(3).

§ 319.56–50 Hass avocados from Peru.

* * * * *

(b) * * * (1) The NPPO of Peru must visit and inspect registered places of production monthly, starting at least 2 months before harvest and continuing until the end of the shipping season, to verify that the growers are complying with the requirements of paragraphs (c) and (e) of this section and follow pest control guidelines, when necessary, to reduce quarantine pest populations. Any personnel conducting trapping and pest surveys under paragraph (d) of this section must be trained and supervised by the NPPO of Peru. APHIS may monitor the places of production if necessary.

(2) In addition to conducting fruit inspections at the packinghouses, the NPPO of Peru must monitor packinghouse operations to verify that the packinghouses are complying with the requirements of paragraph (f) of this section.

* * * * *

(g) *NPPO of Peru inspection.* Following any post-harvest processing, inspectors from the NPPO of Peru must inspect a biometric sample of fruit from each place of production at a rate to be determined by APHIS. The inspectors must visually inspect for the quarantine pests listed in the introductory text of this section and must cut fruit to inspect for *S. catenifer.* If any quarantine pests are detected in this inspection, the place of production where the infested avocados were grown will immediately be suspended from the export program until an investigation has been

conducted by APHIS and the NPPO of Peru and appropriate mitigations have been implemented.

* * * * *

Done in Washington, DC, this 19th day of July 2011.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2011–18707 Filed 7–20–11; 4:15 pm]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Office of Energy Policy and New Uses

7 CFR Part 2902

RIN 0503–AA36

Designation of Biobased Items for Federal Procurement

AGENCY: Departmental Management, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is amending the Guidelines for Designating Biobased Products for Federal Procurement, to add 14 sections to designate items within which biobased products will be afforded Federal procurement preference, as provided for under section 9002 of the Farm Security and Rural Investment Act of 2002, as amended by the Food, Conservation, and Energy Act of 2008 (referred to in this document as ''section 9002''). USDA is also establishing minimum biobased contents for each of these items.

DATES: This rule is effective August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Ron Buckhalt, USDA, Office of Procurement and Property Management, Room 361, Reporters Building, 300 7th St. SW., Washington, DC 20024; e-mail: *biopreferred@usda.gov;* phone (202) 205–4008. Information regarding the Federal biobased preferred procurement program (one part of the BioPreferred Program) is available on the Internet at *http://www.biopreferred.gov.*

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Authority
II. Background
III. Summary of Changes
IV. Discussion of Public Comments
V. Regulatory Information
A. Executive Order 12866: Regulatory Planning and Review
B. Regulatory Flexibility Act (RFA)
C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights
D. Executive Order 12988: Civil Justice Reform
E. Executive Order 13132: Federalism
F. Unfunded Mandates Reform Act of 1995
G. Executive Order 12372: Intergovernmental Review of Federal Programs
H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
I. Paperwork Reduction Act
J. E-Government Act
K. Congressional Review Act

I. Authority

These items are designated under the authority of section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), 7 U.S.C. 8102 (referred to in this document as ''section 9002'').

II. Background

As part of the BioPreferred Program, USDA published, on November 23, 2010, a proposed rule in the **Federal Register** (FR) for the purpose of designating a total of 14 items for the preferred procurement of biobased products by Federal agencies (referred to hereafter in this FR notice as the ''preferred procurement program''). This proposed rule can be found at 75 FR 71492. This rulemaking is referred to in this preamble as Round 7 (RIN 0503–AA36).

In the proposed rule, USDA proposed designating the following 14 items for the preferred procurement program: Animal repellents; bath products; bioremediation materials; compost activators and accelerators; concrete and asphalt cleaners; cuts, burns, and abrasions ointments; dishwashing products; erosion control materials; floor cleaners and protectors; hair care products, including shampoos and conditioners as subcategories; interior paints and coatings; oven and grill cleaners; slide way lubricants; and thermal shipping containers, including durable and non-durable thermal shipping containers as subcategories.

Today's final rule designates the proposed items within which biobased products will be afforded Federal procurement preference. USDA has determined that each of the items being designated under today's rulemaking meets the necessary statutory requirements; that they are being produced with biobased products; and that their procurement will carry out the following objectives of section 9002: to improve demand for biobased products; to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities; and to enhance the Nation's energy security by substituting biobased products for products derived from imported oil and natural gas.

When USDA designates by rulemaking an item (a generic grouping of products) for preferred procurement under the BioPreferred Program, manufacturers of all products under the umbrella of that item, that meet the requirements to qualify for preferred procurement, can claim that status for their products. To qualify for preferred procurement, a product must be within a designated item and must contain at least the minimum biobased content established for the designated item. When the designation of specific items is finalized, USDA will invite the manufacturers and vendors of these qualifying products to post information on the product, contacts, and performance testing on its BioPreferred Web site, *http://www.biopreferred.gov.* Procuring agencies will be able to utilize this Web site as one tool to determine the availability of qualifying biobased products under a designated item. Once USDA designates an item, procuring agencies are required generally to purchase biobased products within these designated items where the purchase price of the procurement item exceeds $10,000 or where the quantity of such items or of functionally equivalent items purchased over the preceding fiscal year equaled $10,000 or more.

Subcategorization. Most of the items USDA is considering for designation for preferred procurement cover a wide range of products. For some items, there are subgroups of products within the item that meet different requirements, uses and/or different performance specifications. Where such subgroups exist, USDA intends to create subcategories within the designated items. In sum, USDA looks at the products within each item category to evaluate whether there are subgroups of products within the item that have different characteristics or that meet different performance specifications and, where USDA finds these types of differences, it intends to create subcategories with the minimum biobased content based on the tested products within the subcategory.

For some items, however, USDA may not have sufficient information at the time of designation to create subcategories within an item. In such instances, USDA may either designate the item without creating subcategories (*i.e.,* defer the creation of subcategories) or designate one subcategory and defer designation of other subcategories

within the item until additional information is obtained. Once USDA has received sufficient additional information to justify the designation of a subcategory, the subcategory will be designated through the proposed and final rulemaking process.

Within today's final rule, USDA has subcategorized three of the items being designated. The first item is hair care products and the subcategories are (1) shampoo products, and (2) conditioner products. The second item is interior paints and coatings and the subcategories are (1) interior latex and waterborne alkyd paints and coatings, and (2) interior oil-based and solventborne alkyd paints and coatings. The third item is thermal shipping containers and the subcategories are (1) durable thermal shipping containers, and (2) non-durable thermal shipping containers.

Minimum Biobased Contents. The minimum biobased contents being established with today's rulemaking are based on products for which USDA has biobased content test data. Because the submission of product samples for biobased content testing is on a strictly voluntary basis, USDA was able to obtain samples only from those manufacturers who volunteered to invest the resources required to submit the samples.

In addition to considering the biobased content test data for each item, USDA also considers other factors including public comments received on the proposed minimum biobased contents and product performance information. USDA also considers the overall range of the tested biobased contents within an item, groupings of similar values, and breaks (significant gaps between two groups of values) in the biobased content test data array. USDA evaluates this information to determine whether some products that may have a lower biobased content also have unique performance or applicability attributes that would justify setting the minimum biobased content at a level that would include these products. USDA believes that this evaluation process allows it to establish minimum biobased contents based on a broad set of factors to assist the Federal procurement community in its decisions to purchase biobased products.

USDA makes every effort to obtain biobased content test data on multiple products within each item. For most designated items, USDA has biobased content test data on more than one product within a designated item. However, in some cases, USDA has been able to obtain biobased content data for only a single product within a designated item. As USDA obtains additional data on the biobased contents for products within these designated items and their subcategories, USDA will evaluate whether the minimum biobased content for a designated item or subcategory will be revised.

USDA anticipates that the minimum biobased content of an item that is based on a single product is more likely to change as additional products within that designated item are identified and tested. In today's final rule, the minimum biobased contents for both subcategories under the thermal shipping containers designated item are based on a single tested product. Given that only three biobased products have been identified in this item, and only one manufacturer of products within each subcategory supplied a sample for testing, USDA believes it is reasonable to set minimum biobased contents for these subcategories based on the single data point for each subcategory.

Overlap with EPA's Comprehensive Procurement Guideline program for recovered content products under the Resource Conservation and Recovery Act (RCRA) Section 6002. Some of the products that are biobased items designated for preferred procurement under the preferred procurement program may also be items the Environmental Protection Agency (EPA) has designated under the EPA's Comprehensive Procurement Guideline (CPG) for products containing recovered materials. In situations where it believes there may be an overlap, USDA is asking manufacturers of qualifying biobased products to make additional product and performance information available to Federal agencies conducting market research to assist them in determining whether the biobased products in question are, or are not, the same products for the same uses as the recovered content products. Manufacturers are asked to provide information highlighting the sustainable features of their biobased products and to indicate the various suggested uses of their product and the performance standards against which a particular product has been tested. In addition, depending on the type of biobased product, manufacturers are being asked to provide other types of information, such as whether the product contains fossil energy-based components (including petroleum, coal, and natural gas) and whether the product contains recovered materials. Federal agencies also may ask manufacturers for information on a product's biobased content and its profile against environmental and health measures and life-cycle costs (the ASTM Standard D7075, ''Standard Practice for Evaluating and Reporting Environmental Performance of Biobased Products,'' or the Building for Environmental and Economic Sustainability (BEES) analysis for evaluating and reporting on environmental performance of biobased products). Federal agencies may then use this information to make purchasing decisions based on the sustainability features of the products. Detailed information on ASTM Standard D7075, and other ASTM standards, can be found on ASTM's Web site at *http://www.astm.org.* Information on the BEES analytical tool can be found on the Web site *http://www.bfrl.nist.gov/oae/software/bees.html.*

Section 6002 of RCRA requires a procuring agency procuring an item designated by EPA generally to procure such an item composed of the highest percentage of recovered materials content practicable. However, a procuring agency may decide not to procure such an item based on a determination that the item fails to meet the reasonable performance standards or specifications of the procuring agency. An item with recovered materials content may not meet reasonable performance standards or specifications, for example, if the use of the item with recovered materials content would jeopardize the intended end use of the item.

Where a biobased item is used for the same purposes and to meet the same Federal agency performance requirements as an EPA-designated recovered content product, the Federal agency must purchase the recovered content product. For example, if a biobased hydraulic fluid is to be used as a fluid in hydraulic systems and because ''lubricating oils containing re-refined oil'' has already been designated by EPA for that purpose, then the Federal agency must purchase the EPA-designated recovered content product, ''lubricating oils containing re-refined oil.'' If, on the other hand, that biobased hydraulic fluid is to be used to address a Federal agency's certain environmental or health performance requirements that the EPA-designated recovered content product would not meet, then the biobased product should be given preference, subject to reasonable price, availability, and performance considerations.

This final rule designates one item for preferred procurement for which there may be overlap with an EPA-designated recovered content product. The interior latex and waterborne alkyd subcategory within the interior paints and coatings item may overlap with the EPA-

designated recovered content products ''reprocessed latex paints'' and ''consolidated latex paints.'' EPA provides recovered materials content recommendations for these recovered content products in a Recovered Materials Advisory Notice (RMAN I). The RMAN recommendations for these CPG products can be found by accessing EPA's Web site *http://www.epa.gov/epaoswer/non-hw/procure/products.htm* and then clicking on the appropriate product name.

Federal Government Purchase of Sustainable Products. The Federal government's sustainable purchasing program includes the following three statutory preference programs for designated products: The BioPreferred Program, the Environmental Protection Agency's Comprehensive Procurement Guideline for products containing recovered materials, and the Environmentally Preferable Purchasing program. The Office of the Federal Environmental Executive (OFEE) and the Office of Management and Budget (OMB) encourage agencies to implement these components comprehensively when purchasing products and services.

Procuring agencies should note that not all biobased products are ''environmentally preferable.'' For example, unless cleaning products contain no or reduced levels of metals and toxic and hazardous constituents, they can be harmful to aquatic life, the environment, and/or workers. Household cleaning products that are formulated to be disinfectants are required, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), to be registered with EPA and must meet specific labeling requirements warning of the potential risks associated with misuse of such products. When purchasing environmentally preferable cleaning products, many Federal agencies specify that products must meet Green Seal standards for institutional cleaning products or that the products have been reformulated in accordance with recommendations from the EPA's Design for the Environment (DfE) program. Both the Green Seal standards and the DfE program identify chemicals of concern in cleaning products. These include zinc and other metals, formaldehyde, ammonia, alkyl phenol ethoxylates, ethylene glycol, and volatile organic compounds (VOC). In addition, both require that cleaning products have neutral or less caustic pH.

In contrast, some biobased products may be more environmentally preferable than some products that meet Green Seal standards for institutional cleaning products or that have been reformulated in accordance with EPA's DfE program. To fully compare products, one must look at the ''cradle-to-grave'' impacts of the manufacture, use, and disposal of products. Biobased products that will be available for preferred procurement under this program have been assessed as to their ''cradle-to-grave'' impacts.

One consideration of a product's impact on the environment is whether (and to what degree) it introduces new fossil carbon into the atmosphere. Fossil carbon is derived from non-renewable sources (typically fossil fuels such as coal and oil), whereas renewable biomass carbon is derived from renewable sources (biomass). Qualifying biobased products offer the user the opportunity to manage the carbon cycle and reduce the introduction of new fossil carbon into the atmosphere.

Manufacturers of qualifying biobased products designated under the preferred procurement program will be able to provide, at the request of Federal agencies, factual information on environmental and human health effects of their products, including the results of the ASTM D7075, or the comparable BEES analysis which examines 12 different environmental parameters, including human health. Therefore, USDA encourages Federal procurement agencies to consider that USDA has already examined all available information on the environmental and human health effects of biopreferred products, when making their purchasing decisions.

Other Preferred Procurement Programs. Federal procurement officials should also note that biobased products may be available for purchase by Federal agencies through the AbilityOne Program (formerly known as the Javits-Wagner-O'Day (JWOD) program). Under this program, members of organizations including the National Industries for the Blind (NIB) and the National Institute for the Severely Handicapped (NISH) offer products and services for preferred procurement by Federal agencies. A search of the AbilityOne Program's online catalog (www.abilityone.gov) indicated that four of the items being designated today (concrete and asphalt cleaners, dishwashing detergent, floor cleaners and protectors, and hair care products) are available through the AbilityOne Program. While there is no specific product within these items identified in the AbilityOne online catalog as being a biobased product, it is possible that such biobased products are available or will be available in the future. Also, because additional categories of products are frequently added to the AbilityOne Program, it is possible that biobased products within other items being designated today may be available through the AbilityOne Program in the future. Procurement of biobased products through the AbilityOne Program would further the objectives of both the AbilityOne Program and the preferred procurement program.

Outreach. To augment its own research, USDA consults with industry and Federal stakeholders to the preferred procurement program during the development of the rulemaking packages for the designation of items. USDA consults with stakeholders to gather information used in determining the order of item designation and in identifying: Manufacturers producing and marketing products that fall within an item proposed for designation; performance standards used by Federal agencies evaluating products to be procured; and warranty information used by manufacturers of end user equipment and other products with regard to biobased products.

Future Designations. In making future designations, USDA will continue to conduct market searches to identify manufacturers of biobased products within items. USDA will then contact the identified manufacturers to solicit samples of their products for voluntary submission for biobased content testing. Based on these results, USDA will then propose new items for designation for preferred procurement.

In the preamble to the first six items designated for preferred procurement (71 FR 13686, March 16, 2006), USDA stated that it planned to identify approximately 10 items in each future rulemaking. In an effort to finalize the designation of more items in a shorter time period, USDA now plans to increase the number of items in each rulemaking, whenever possible. Thus, today's final rulemaking designates 14 items for preferred procurement.

USDA has developed a preliminary list of items for future designation and has posted this preliminary list on the BioPreferred Web site. While this list presents an initial prioritization of items for designation, USDA cannot identify with certainty which items will be presented in each of the future rulemakings. In response to comments from other Federal agencies, USDA intends to give increased priority to those items that contain the highest biobased content. In addition, as the program matures, manufacturers of biobased products within some industry segments have become more responsive to USDA's requests for technical information than those in other segments. Thus, items with high biobased content and for which

sufficient technical information can be obtained quickly may be added or moved up on the prioritization list. USDA intends to update the list of items for future designation on the BioPreferred Web site every six months, or more often if significant changes are made to the list.

III. Summary of Changes

As a result of the comments received on the proposed rule, USDA has made several changes in finalizing the proposed rule. These changes are summarized in the remainder of this section. A summary of each comment received, and USDA's response to the comment, is presented in section IV.

The definitions of three proposed items were revised to avoid potential overlap with previously designated items. The definition of the bath products designated item was revised to specifically exclude products marketed as hand cleaners and/or hand sanitizers. The definition of the concrete and asphalt cleaners designated item was revised to include only those products marketed for use in commercial or residential construction or industrial applications. The definition of the floor cleaners and protectors designated item was revised to include only those products marketed specifically for use on industrial, commercial, and/or residential flooring.

The proposed item interior paints and coatings was subcategorized. The subcategories are (1) interior latex and waterborne alkyd paints and coatings, and (2) interior oil-based and solventborne alkyd paints and coatings.

The discussion of potential overlap with the EPA recovered content product re-refined lubricating oil was removed from the slide way lubricants.

IV. Discussion of Public Comments

USDA solicited comments on the proposed rule for 60 days ending on January 24, 2011. USDA received comments from five commenters by that date. The comments were from three Federal government agencies and two biobased product manufacturers.

In the remainder of this section, USDA first addresses two general comments that relate to the overall designation process. Comments related to the designation of specific items are presented next, followed by USDA's response to those comments.

General

Comment: One commenter stated that the BioPreferred Web site might imply to some that the listed products have been tested and meet all Federal requirements, when the primary test of concern is for biobased content. The commenter stated that, in numerous cases, the products have not been tested/evaluated for DoD applications. The commenter suggested that there should be some type of statement on the Web site explaining that the item type meets USDA requirements but not necessarily those of any other component of the Federal government.

Response: USDA agrees with the commenter that the functional performance of biobased products is of great concern to procuring agencies and that such performance is not guaranteed as a part of the designation process. USDA attempts to gather performance information from biobased product manufacturers during the designation process, but does not have the statutory authority to require manufacturers to provide such information. The absence of industry standards listed in association with a catalog entry simply indicates that the company has elected not to provide any information about performance testing associated with their products. Purchasing officials interested in performance data associated with a specific product are encouraged to contact the listed contacts for further information. USDA will consider the feasibility of including a symbol in the catalog (when the performance standards record is null) so that purchasing officials can quickly see which products have testing standards associated with their products.

New Product Category

Comment: One commenter believes that it is important to have a product category designation for automotive motor oils. The commenter states that there are categories for 2-cycle engine oil, and bar and chain lubricant, which are typically petroleum-based products. The commenter believes there would be significant benefit in designating automotive motor oils as a product category in the next round. The commenter stated that this could lead to the creation of more effective and environmentally friendly motor oil from biobased materials.

Response: USDA thanks the commenter for the recommendation and is willing to work with the commenter to obtain valid information regarding the potential for establishing a product category for automotive motor oils. USDA would be especially interested in obtaining information related to performance characteristics of biobased automotive motor oils, including documentation of successful performance testing by recognized testing organizations such as ASTM and SAE.

Animal Repellents

Comment: One commenter stated that Federal agencies are implementing integrated pest management (IPM) in place of the use of pesticides. The commenter recommends USDA address whether the use of biobased animal repellents is consistent with Federal IPM efforts.

Response: USDA contacted Dr. Martin Draper, the National Program Leader—Plant Pathology, of USDA's National Institute of Food and Agriculture to discuss whether the use of biobased animal repellents is consistent with Federal IPM programs. Dr. Draper stated that IPM encourages the use of diverse methods of mitigating pest pressures, in most cases reducing pesticide use. He further stated that biorational pesticides and biological controls would be welcome and encouraged within the constructs of IPM. He stated that IPM programs are focused on efficacious products and strategies that optimize economic advantage while reducing potential deleterious effects on the environment and human health and that if the products that can do that are biobased, all the better. He further stated that pest repellents would be included as a component of IPM if that was an appropriate strategy. According to Dr. Draper, exclusion, the best option in managing vertebrate pests, is impractical or illegal in some cases. In those cases, repellents become very important in the management of some very damaging pests. Dr. Draper concluded by saying that he did not see where the use of biobased animal repellents would be a conflict with IPM programs.

Bath Products

Comment: One commenter believes that the proposed designation of bath products overlaps with the previous designation of hand cleaners. The commenter stated that manufacturers and purchasers need clear guidance as to which biobased content level applies, as the recommended minimum biobased content level for hand cleaners is slightly higher than that proposed for bath products. The commenter further recommends that USDA provide a clear definition of bath products that distinguishes it from hand cleaners.

Response: USDA does not believe that the designation of bath products overlaps significantly with the previous designation of hand cleaners and sanitizers. Hand cleaners and sanitizers are defined as products formulated exclusively for use as human hand personal care products. Bath products, as defined, are personal hygiene

products, including soaps and other cleansers. However, USDA does agree that there may be some confusion regarding these differences and has amended the definition of bath products to state that these exclude products that are specifically marketed as ''hand cleaners'' and/or ''hand sanitizer'' products.

Bioremediation Materials and Compost Activators and Accelerators

Comment: One commenter stated that the designation of bioremediation materials and compost activators could lead to unnecessary addition of biobased components to these products in order to qualify for Federal procurement preference.

The commenter stated that a review of the Technical Support Document indicates that the overwhelming majority of the products identified within these two product categories consist of active biological microorganism cultures. The commenter further noted that some product descriptions also indicate that the product contains nutrients or organic materials. However, the active ingredient is typically a culture of microorganisms.

Thus, according to the commenter, developing a formula for sale to the government by adding more biobased organic materials that simply dilute the microbiological active ingredient is a logical response to USDA's contemplated biobased content minimum. The commenter stated that the result of a ''successful'' USDA designation in this area might be simply the wasting of biobased products into the compost pile or into soils being remediated. The commenter further stated that the addition of biobased organic materials would also increase the use of packaging materials, fuels, *etc.* for product transport, having a negative effect on the environment.

The commenter also noted that neither of these product classes appears to have standardized tests to determine product effectiveness—which increases the difficulty to the government to avoid procurement of diluted products prepared to satisfy a biobased content mandate.

The commenter recommends that the ''bioremediation materials'' product category and the ''compost activators and accelerators'' product category not be designated under the biobased procurement preference program.

Response: USDA disagrees with the commenter's recommendation that bioremediation materials and compost activators and accelerators not be included in the biobased procurement preference program. Based on the information collected prior to proposing these items for designation, available products within these two items are almost universally high in biobased content. Also, because the microorganisms that are the active ingredients in the products would be counted as biobased content, reducing the percentage of the microorganisms in the product and increasing the biobased nutrient, or carrier, content would not increase the overall biobased content of a product. In addition, reformulating the product to include fewer microorganisms would tend to hurt the performance of the product. Thus, manufacturers would have no reason to add inactive biobased ingredients to increase the biobased content of the products. USDA held a meeting with the commenter to clarify the comments/responses and explain the rationale for finalizing the designation of these two items, but did not make any changes in the final rule.

Concrete and Asphalt Cleaners

Comment: One commenter stated that the proposed designation of concrete and asphalt cleaners overlaps with the previously designated graffiti remover. The commenter believes that guidance is needed as to which biobased content applies, as the proposed minimum biobased content level for graffiti remover is significantly lower than that for the concrete and asphalt cleaners. The commenter further stated that concrete and asphalt cleaners should be clearly distinguished from graffiti remover.

Response: USDA reviewed the product information collected on both the proposed concrete and asphalt cleaners item and the previously designated graffiti remover item to investigate clarifications that could be made to the definitions. Based on the product descriptions provided by manufacturers, USDA found that products within the proposed concrete and asphalt cleaners item were predominantly described as being intended for use in construction or industrial applications. Graffiti and grease remover products were generally described as being intended for use in janitorial and/or institutional applications. USDA has, therefore, clarified the definition of concrete and asphalt cleaners to specify that products within this item include only those marketed for use in construction or industrial applications.

Comment: One commenter, in reference to the Boeing Spec D6–17487P listed in connection with the proposed concrete and asphalt cleaners item, asked if proprietary standards like these are readily available to the purchasing agencies. The commenter stated that, if so, their Hazardous Minimization/Green Products Community would like access to them.

Response: USDA does not have access to individual performance specifications such as Boeing Specification D6–17487P. USDA suggests that interested parties contact biobased product vendors/manufacturers, or the entity that established the performance standard, directly regarding access to their specifications.

Dishwashing Products

Comment: One commenter, in reference to the Boeing Spec D6–7127 listed in connection with the proposed dishwashing products item, asked if proprietary standards like these are readily available to purchasing agencies. The commenter stated that, if so, their Hazardous Minimization/Green Products Community would like access to them.

Response: As stated in the response to a similar comment related to the concrete and asphalt cleaners item, USDA does not have access to individual performance standards and recommends that interested parties contact biobased product vendors/manufacturers, or the entity that established the performance standard.

Floor Cleaners and Protectors

Comment: One commenter believes that the proposed designation of floor cleaners and protectors overlaps with the previous designation of bathroom and spa cleaners, as both types of products can be used to clean similar surfaces. The commenter believes that guidance is needed as to which biobased content applies, as the proposed minimum biobased content level for floor cleaners is slightly higher than that recommended for bathroom cleaning products. The commenter further stated that a definition of floor cleaners that clearly distinguishes it from bathroom cleaners is needed.

Response: USDA has revised the definition of the proposed floor cleaners and protectors item to specify that products within this item are marketed specifically for use on industrial, commercial, and/or residential flooring. USDA agrees with the commenter that some products that are marketed within the previously designated bathroom and spa cleaners item may be used on floors. Those products are generally marketed as multi-surface cleaners formulated specifically for use in bathrooms and spa areas. By specifying that applicable floor cleaner and protector products are

those marketed specifically for use on flooring, USDA believes that most overlay issues will be eliminated.

Hair Care Products

Comment: One commenter recommends that USDA create a category of ''personal care products,'' with bath products, hand cleaners, and hair care products listed as subsets. Each item should be clearly defined to be distinguishable from each other.

Response: USDA agrees with the commenter that some of the proposed and previously designated items include products that are functionally similar and could be more clearly defined to avoid overlap. USDA has developed the designation rulemakings in several individual ''rounds'' as new product information was gathered. In addition, biobased product manufacturers have continued to introduce biobased alternatives that are marketed in an increasing variety of applications, especially in the category of ''multi-purpose'' cleaners and lubricants. USDA recognizes that the potential for many biobased products to be marketed under multiple designated items continues to increase. On one hand, this is encouraging because it means that biobased alternatives are becoming more widespread and more marketable. On the other hand, it means that some of the items that were designated early in the process are not organized and defined in the most practical way. Once the initial designation of those items for which information is readily available has been completed, USDA intends to revisit the entire list of designated items and undertake a reorganization to streamline and clarify the items and update the minimum biobased content requirements, as applicable.

Interior Paints and Coatings

Comment: One commenter proposes that this item designation be subcategorized based on differences in the requirements, uses, and performance specifications. Based on the USDA definition of subgroups, the commenter believes two subgroups exist for interior paints and coatings, ''interior latex and latex-hybrid paints and coatings'' and ''interior oil-based and alkyd paints and coatings.'' Because significantly different technologies and chemistries are used to meet the requirements, uses, and performance specific to each of these subgroups, different minimum biobased content levels should be set for each of these.

The commenter stated that coatings within the first proposed subcategory, interior latex and latex-hybrid paints and coatings, are carried in water and are capable of meeting all national and regional VOC regulations. The commenter also stated that it is important that procurement officers have biobased options capable of meeting the VOC regulations in their particular region. The commenter stated that they currently sell products that would fall into this subcategory and can provide them to the USDA for biobased content testing. The commenter recommended that a minimum level of approximately 20 percent biobased carbon would be appropriate for the latex and latex hybrid-paints and coatings subcategory.

According to the commenter, latex paint is the dominant coating type used in the interior paint and coatings market; used for typical painting projects, such as wall paint. The commenter stated that users of latex paints have very specific performance expectations, including fast drying times and low odor. The commenter noted that these are very important factors, because the paint cost accounts for only about 20–30 percent of the total paint-job cost, with the majority of costs being related to labor. Faster drying paints significantly reduce labor costs and allow office buildings and other interior spaces to be quickly returned to service after painting. These coatings are also carried in water which results in low odor, low VOC and significantly lower contribution to indoor air quality issues.

The commenter also stated that subcategorization of interior latex and latex-hybrid paint and coatings will also provide the requested clarity on the potential overlap that was identified by the USDA, with the EPA's Resource Conservation and Recovery Act (RCRA). By subcategorizing in this manner, there is no overlap for applications that require a paint from the ''interior oil-based and alkyd paint and coatings'' subcategory. The commenter stated that, in the case of applications requiring paint from the ''interior latex and latex-hybrid paints and coatings'' subcategory, the decision between a biobased latex paint (USDA BioPreferred) or reprocessed/consolidated latex paint (EPA RCRA) can be made by the procurement officer based on price, availability, and performance considerations.

The commenter stated that the second proposed subcategory, interior oil-based and alkyd paints and coatings are defined by the ACA as ''a paint that contains drying oil, oil varnish or oil-modified resin as the film-forming ingredient.'' The commenter explained that an alkyd resin is defined by the ACA as ''synthetic resin modified with oil.'' Thus, alkyd paints and coatings are defined as ''coatings that contains alkyd resins in the binder.'' The commenter also stated that these coatings typically are carried in a natural or synthetic solvent and therefore may not meet VOC regulations in certain geographical regions.

The commenter stated that the coating HC84–0015 tested by the USDA qualifies for this subcategory and the coatings Q14G–0009, Q14G–0013, and Q14G–0002, may qualify for this subcategory as well. The commenter agrees with a 67 percent biobased content level for this subcategory.

The commenter explained that interior alkyd and oil-based paints in the U.S. market are typically used for trim paint and as wood primers, especially where tannin blocking is specifically required. The commenter stated that users of alkyd and oil-based paints have very specific performance expectations and that these coatings are used on trim specifically for their hardness, smooth application, tannin blocking ability, and the ability to achieve substantially higher gloss levels. They can also be used for wall coatings when this type of performance is required. In contrast to latex and latex hybrid, these types of coatings are slow to dry and often have some odor associated with them.

The commenter recommended the following changes to the proposed designation of biobased interior paints and coatings for preferred Federal procurement:

The subcategories should be based on their differentiated use and performance specifications. Allowing for the inclusion of latex paints will lead to wider adoption and use of biobased products in the interior paints and coatings category.

The commenter believes that a level of 67 percent biobased content is appropriate for the interior oil-based and alkyd paints and coatings subcategory, but the level for the interior latex and latex-hybrid paints and coatings should be approximately 20 percent biobased carbon content.

The commenter also stated that the 100 percent biobased content level found in product MXF6–0004 should not be used to determine the minimum biobased content for interior paints and coatings or either of the proposed subcategories because this type of coating is not feasible for use and this product was not tested for biobased content as it is intended to be used. The commenter stated that, when used as instructed by the manufacture in the product description, the biobased content of the full painting system will

be significantly lower. While the milk-paint base itself is biobased, according to the product description provided by the USDA, it requires mixing with an adhesive in order to adhere to non-porous surfaces (*e.g.* any previously painted surfaces). Milk-paint manufactures also typically recommend using an acrylic top-coat for durability. The commenter stated that, since the adhesive is a necessary part of the ''coating'' to insure adhesion to the substrate, it must be included in any determination of biobased content.

Response: USDA considered the information provided by the commenter, reviewed the data previously collected on this proposed item, and also researched other coating-related information available on the Internet. USDA agrees with the commenter that the proposed item should include at least two subcategories based on two fundamentally different coating technologies.

USDA found that within the broad category of interior paints and coatings all products can be categorized at the highest level as either waterborne or solventborne. As the names imply, the products can be divided into those that use water as the ''carrier'' liquid and those that use a solvent other than water (*e.g.,* typically petroleum-based solvents). Waterborne coatings have traditionally been formulated as an emulsion of petroleum based acrylic resins in water. These coatings were low in VOC content, but did not contain biobased components. Solventborne coatings have traditionally been formulated as plant based (soy, linseed, castor) alkyd resins in petroleum based solvents. These coatings have a much higher VOC content, but do include a biobased component.

Recent advances in coating technology have resulted in the formulation of waterborne coatings that include varying levels of plant based alkyd resins. Thus, there are now biobased alternatives within both the waterborne and solventborne coating types. While solventborne alkyd coatings still generally contain a much higher biobased content, waterborne coatings with a significant biobased content are becoming increasingly popular. The commenter reported selling a line of waterborne coating products with at least 20 percent biobased content. USDA also contacted a major resin manufacturer who confirmed that their products are used in waterborne alkyd coatings containing biobased contents in the 20 to 30 percent range.

USDA agrees with the commenter that other types of coatings, such as the milk-paint discussed by the commenter, are not generally representative of the coating technologies that dominate the interior coatings market. While various other types of coating technologies are available, their use is very specialized and the volumes that would potentially be purchased by Federal procurement officials is negligible compared to waterborne and solventborne coatings. USDA has, therefore, not considered these specialty coatings in establishing subcategories for this item. However, to the extent that any of these specialty coatings fall within the subcategories established in today's final rule, they would be eligible for the same consideration for preferred procurement as more traditional coatings.

For the reasons presented above, USDA has decided to create two subcategories within the interior paints and coatings item. USDA recognizes that there are many factors for purchasing officials to consider when purchasing interior paints and coatings. Procurement decisions must be made considering applicable VOC regulations as well as a long list of necessary coating performance characteristics. Creating two subcategories within the interior paints and coatings item allows USDA to acknowledge the differences between the two basic coating types and also to set minimum biobased contents that are representative of each type. In the final rule, the two subcategories are: (1) Interior latex and waterborne alkyd paints and coatings, and (2) interior oil-based and solventborne alkyd paints and coatings. The minimum biobased content of the first subcategory is 20 percent and the minimum biobased content of the second subcategory is 67 percent. USDA believes that these minimum biobased contents will result in procuring officials being able to select from a sufficiently large number of products to ensure that their performance needs can be met.

Comment: One commenter stated that, under E.O. 13423 and 13514, Federal agencies are using interior paints with no or low VOC content as part of their high performance sustainable building efforts. For some agencies, the use of no- or low-VOC paints is necessary to help meet air non-attainment area requirements. USDA should address the VOC content of biobased paints and whether the use of these products is consistent with agency efforts to reduce their use of VOC-containing products.

Response: As discussed in the response to the previous comment, USDA has subcategorized the interior paints and coatings item into two subcategories. The two subcategories can generally be described as being either waterborne (the latex and waterborne alkyds subcategory) or solventborne (the oil-based and solventborne alkyds subcategory). Waterborne coatings, as the name implies, use water as the carrier for the resins and pigments. Solventborne coatings use an organic solvent (typically a petroleum-derived solvent) as the carrier. The vast majority of coatings used in the interior paints and coatings market are waterborne coatings and one of the primary driving factors in the emergence of waterborne technology was the low organic solvent content of these coatings. Not only do these coatings meet VOC requirements, they are fast drying and low in odor. Solventborne coatings are typically used as primers and for wood trim, cabinets, and furniture. They are used primarily for their hardness, smooth application, and higher gloss levels. Because they contain organic solvents, however, these coatings may not meet VOC regulations in some geographical regions.

USDA agrees with the commenter that the use of low VOC coatings is an important consideration in many Federal agency's environmental programs. USDA recommends that purchasing officials first consider the performance and environmental concerns when deciding whether to purchase waterborne or solventborne coatings. Once that decision is made, purchasing officials must determine whether the available biobased alternatives within each coating type meet their performance and cost criteria.

Slide Way Lubricants

Comment: One commenter stated that the proposed designation of slide way lubricants does not overlap with EPA's designation of re-refined lubricating oils. The commenter stated that the EPA designation applies to engine lubricants, hydraulic fluids, and gear oils.

Response: USDA thanks the commenter for the comment. USDA reconsidered the potential for an overlap and agrees that slide way lubricants do not overlap with EPA's designated re-refined lubricating oil. USDA has removed the discussion of the potential overlap for this item from the final rule.

Thermal Shipping Containers

Comment: One commenter stated that this proposed category has two subcategories with only one manufacturer and that USDA is proposing to defer the compliance date until additional manufacturers are identified. The commenter suggests that

in future rounds it may be preferable to hold off designating an item until more than one manufacturer is identified.

Response: Section 9002 of the Farm Security and Rural Investment Act of 2002 (FSRIA), as amended by the Food, Conservation, and Energy Act of 2008 (FCEA), states that USDA shall ''* * * designate those items (including finished products) that are or can be produced with biobased products (including biobased products for which there is only a single product or manufacturer in the category) that will be subject to the preference described in paragraph (2) * * *''. Thus, USDA does not agree that it should defer designating an item until more than one manufacturer is identified.

V. Regulatory Information

A. Executive Order 12866: Regulatory Planning and Review

Executive Order 12866 requires agencies to determine whether a regulatory action is ''significant.'' The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may: ''(1) Have 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; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

Today's final rule has been determined by the Office of Management and Budget to be not significant for purposes of Executive Order 12866. We are not able to quantify the annual economic effect associated with today's final rule. As discussed earlier in this preamble, USDA made extensive efforts to obtain information on the Federal agencies' usage within the 14 designated items, including their subcategories. These efforts were largely unsuccessful. Therefore, attempts to determine the economic impacts of today's final rule would require estimation of the anticipated market penetration of biobased products based upon many assumptions. In addition, because agencies have the option of not purchasing designated items if price is ''unreasonable,'' the product is not readily available, or the product does not demonstrate necessary performance characteristics, certain assumptions may not be valid. While facing these quantitative challenges, USDA relied upon a qualitative assessment to determine the impacts of today's final rule. Consideration was also given to the fact that agencies may choose not to procure designated items due to unreasonable price.

1. Summary of Impacts

Today's final rule is expected to have both positive and negative impacts to individual businesses, including small businesses. USDA anticipates that the biobased preferred procurement program will provide additional opportunities for businesses and manufacturers to begin supplying products under the designated biobased items to Federal agencies and their contractors. However, other businesses and manufacturers that supply only non-qualifying products and do not offer biobased alternatives may experience a decrease in demand from Federal agencies and their contractors. USDA is unable to determine the number of businesses, including small businesses, that may be adversely affected by today's final rule. The final rule, however, will not affect existing purchase orders, nor will it preclude businesses from modifying their product lines to meet new requirements for designated biobased products. Because the extent to which procuring agencies will find the performance, availability and/or price of biobased products acceptable is unknown, it is impossible to quantify the actual economic effect of the rule.

2. Benefits of the Final Rule

The designation of these 14 items provides the benefits outlined in the objectives of section 9002; to increase domestic demand for many agricultural commodities that can serve as feedstocks for production of biobased products, and to spur development of the industrial base through value-added agricultural processing and manufacturing in rural communities. On a national and regional level, today's final rule can result in expanding and strengthening markets for biobased materials used in these items.

3. Costs of the Final Rule

Like the benefits, the costs of today's final rule have not been quantified. Two types of costs are involved: Costs to producers of products that will compete with the preferred products and costs to Federal agencies to provide procurement preference for the preferred products. Producers of competing products may face a decrease in demand for their products to the extent Federal agencies refrain from purchasing their products. However, it is not known to what extent this may occur. Pre-award procurement costs for Federal agencies may rise minimally as the contracting officials conduct market research to evaluate the performance, availability and price reasonableness of preferred products before making a purchase.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601–602, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

USDA evaluated the potential impacts of its designation of these items to determine whether its actions would have a significant impact on a substantial number of small entities. Because the preferred procurement program established under section 9002 applies only to Federal agencies and their contractors, small governmental (city, county, *etc.*) agencies are not affected. Thus, the proposal, if promulgated, will not have a significant economic impact on small governmental jurisdictions.

USDA anticipates that this program will affect entities, both large and small, that manufacture or sell biobased products. For example, the designation of items for preferred procurement will provide additional opportunities for businesses to manufacture and sell biobased products to Federal agencies and their contractors. Similar opportunities will be provided for entities that supply biobased materials to manufacturers.

The intent of section 9002 is largely to stimulate the production of new biobased products and to energize emerging markets for those products. Because the program is still in its infancy, however, it is unknown how many businesses will ultimately be affected. While USDA has no data on the number of small businesses that may choose to develop and market biobased products within the items designated by this rulemaking, the number is expected to be small. Because biobased products represent a small emerging market, only a small percentage of all manufacturers,

large or small, are expected to develop and market biobased products. Thus, the number of small businesses manufacturing biobased products affected by this rulemaking is not expected to be substantial.

The preferred procurement program may decrease opportunities for businesses that manufacture or sell non-biobased products or provide components for the manufacturing of such products. Most manufacturers of non-biobased products within the items being designated for preferred procurement in this rule are expected to be included under the following NAICS codes: 324191 (petroleum lubricating oil and grease manufacturing), 325320 (pesticide and other agricultural chemical manufacturing), 325412 (pharmaceutical preparation manufacturing), 325510 (paint and coating manufacturing), 325611 (soap and other detergent manufacturing), 325612 (polish and other sanitation goods manufacturing), 325620 (toilet preparation manufacturing), 325998 (other miscellaneous chemical products and preparation manufacturing), 326150 (urethane and other foam product manufacturing), and 314999 (other miscellaneous textile mill products). USDA obtained information on these 10 NAICS categories from the U.S. Census Bureau's Economic Census database. USDA found that the Economic Census reports about 8,092 companies within these 10 NAICS categories and that these companies own a total of about 9,255 establishments. Thus, the average number of establishments per company is about 1.1. The Census data also reported that of the 9,255 individual establishments, about 9,119 (98.5 percent) have fewer than 500 employees. USDA also found that the overall average number of employees per company among these industries is about 58, with only one segment reporting an average of more than 100 employees (the pharmaceutical preparation industry segment at about 250 employees per company). Thus, nearly all of the businesses fall within the Small Business Administration's definition of a small business (fewer than 500 employees, in most NAICS categories).

USDA does not have data on the potential adverse impacts on manufacturers of non-biobased products within the items being designated, but believes that the impact will not be significant. Most of the items being designated in this rulemaking are typical consumer products widely used by the general public and by industrial/commercial establishments that are not subject to this rulemaking. Thus, USDA believes that the number of small businesses manufacturing non-biobased products within the items being designated and selling significant quantities of those products to government agencies affected by this rulemaking to be relatively low. Also, this final rule will not affect existing purchase orders and it will not preclude procuring agencies from continuing to purchase non-biobased items when biobased items do not meet the availability, performance, or reasonable price criteria. This final rule will also not preclude businesses from modifying their product lines to meet new specifications or solicitation requirements for these products containing biobased materials.

After considering the economic impacts of this final rule on small entities, USDA certifies that this action will not have a significant economic impact on a substantial number of small entities.

While not a factor relevant to determining whether the final rule will have a significant impact for RFA purposes, USDA has concluded that the effect of the rule will be to provide positive opportunities to businesses engaged in the manufacture of these biobased products. Purchase and use of these biobased products by procuring agencies increase demand for these products and result in private sector development of new technologies, creating business and employment opportunities that enhance local, regional, and national economies.

C. Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This final rule has been reviewed in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and does not contain policies that would have implications for these rights.

D. Executive Order 12988: Civil Justice Reform

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. This rule does not preempt State or local laws, is not intended to have retroactive effect, and does not involve administrative appeals.

E. Executive Order 13132: Federalism

This final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Provisions of this final rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various government levels.

F. Unfunded Mandates Reform Act of 1995

This final rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, for State, local, and tribal governments, or the private sector. Therefore, a statement under section 202 of UMRA is not required.

G. Executive Order 12372: Intergovernmental Review of Federal Programs

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

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

Today's final rule does not significantly or uniquely affect ''one or more Indian tribes, * * * the relationship between the Federal Government and Indian tribes, or * * * the distribution of power and responsibilities between the Federal Government and Indian tribes.'' Thus, no further action is required under Executive Order 13175.

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 through 3520), the information collection under this final rule is currently approved under OMB control number 0503–0011.

J. E-Government Act Compliance

USDA is committed to compliance with the E-Government Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. USDA is implementing an electronic information system for posting information voluntarily submitted by manufacturers or vendors on the products they intend to offer for preferred procurement under each designated item. For information pertinent to E-Government Act compliance related to this rule, please contact Ron Buckhalt at (202) 205–4008.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, that includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. USDA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

List of Subjects in 7 CFR Part 2902

Biobased products, Procurement.

For the reasons stated in the preamble, the Department of Agriculture is amending 7 CFR chapter XXIX as follows:

Chapter XXIX Office of Energy

PART 2902—GUIDELINES FOR DESIGNATING BIOBASED PRODUCTS FOR FEDERAL PROCUREMENT

■ 1. The authority citation for part 2902 continues to read as follows:

Authority: 7 U.S.C. 8102.

■ 2. Add §§ 2902.61 through 2902.74 to subpart B to read as follows:

Sec.
2902.61 Animal repellents.
2902.62 Bath products.
2902.63 Bioremediation materials.
2902.64 Compost activators and accelerators.
2902.65 Concrete and asphalt cleaners.
2902.66 Cuts, burns, and abrasions ointments.
2902.67 Dishwashing products.
2902.68 Erosion control materials.
2902.69 Floor cleaners and protectors.
2902.70 Hair care products.
2902.71 Interior paints and coatings.
2902.72 Oven and grill cleaners.
2902.73 Slide way lubricants.
2902.74 Thermal shipping containers.

§ 2902.61 Animal repellents.

(a) *Definition.* Products used to aid in deterring animals that cause destruction to plants and/or property.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 79 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased animal repellents. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased animal repellents.

§ 2902.62 Bath products.

(a) *Definition.* Personal hygiene products including bar soaps, liquids, or gels that are referred to as body washes, body shampoos, or cleansing lotions, but excluding products marketed as hand cleaners and/or hand sanitizers.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 61 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bath products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bath products.

§ 2902.63 Bioremediation materials.

(a) *Definition.* Dry or liquid solutions (including those containing bacteria or other microbes but not including sorbent materials) used to clean oil, fuel, and other hazardous spill sites.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 86 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased bioremediation materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased bioremediation materials.

§ 2902.64 Compost activators and accelerators.

(a) *Definition.* Products in liquid or powder form designed to be applied to compost piles to aid in speeding up the composting process and to ensure successful compost that is ready for consumer use.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 95 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased compost activators and accelerators. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased compost activators and accelerators.

§ 2902.65 Concrete and asphalt cleaners.

(a) *Definition.* Chemicals used in concrete etching as well as to remove petroleum-based soils, lubricants, paints, mastics, organic soils, rust, and dirt from concrete, asphalt, stone and other hard porous surfaces. Products within this item include only those marketed for use in commercial or residential construction or industrial applications.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 70 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased concrete and asphalt cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased concrete and asphalt cleaners.

§ 2902.66 Cuts, burns, and abrasions ointments.

(a) *Definition.* Products designed to aid in the healing and sanitizing of scratches, cuts, bruises, abrasions, sun damaged skin, tattoos, rashes and other skin conditions.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 84 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased cuts, burns, and abrasions ointments. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased cuts, burns, and abrasions ointments.

§ 2902.67 Dishwashing products.

(a) *Definition.* Soaps and detergents used for cleaning and clean rinsing of tableware in either hand washing or dishwashing.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 58 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased dishwashing products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased dishwashing products.

§ 2902.68 Erosion control materials.

(a) *Definition.* Woven or non-woven fiber materials manufactured for use on construction, demolition, or other sites to prevent wind or water erosion of loose earth surfaces, which may be combined with seed and/or fertilizer to promote growth.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased erosion control materials. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased erosion control materials.

§ 2902.69 Floor cleaners and protectors.

(a) *Definition.* Cleaning solutions for either direct application or use in floor scrubbers for wood, vinyl, tile, or similar hard surface floors. Products within this item are marketed specifically for use on industrial, commercial, and/or residential flooring.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 77 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased floor cleaners and protectors. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased floor cleaners and protectors.

§ 2902.70 Hair care products.

(a) *Definitions.* (1) Personal hygiene products specifically formulated for hair cleaning and treating applications, including shampoos and conditioners.

(2) Hair care products for which Federal preferred procurement applies are:

(i) *Shampoos.* These are products whose primary purpose is cleaning hair. Products that contain both shampoos and conditioners are included in this subcategory because the primary purpose of these products is cleaning the hair.

(ii) *Conditioners.* These are products whose primary purpose is treating hair to improve the overall condition of hair.

(b) *Minimum biobased content.* The minimum biobased content for all hair care products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Shampoos—66 percent.

(2) Conditioners—78 percent.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased hair care products. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased hair care products.

§ 2902.71 Interior paints and coatings.

(a) *Definition.* (1) Pigmented liquids, formulated for use indoors, that dry to form a film and provide protection and added color to the objects or surfaces to which they are applied.

(2) Interior paints and coatings products for which Federal preferred procurement applies are:

(i) Interior latex and waterborne alkyd paints and coatings.

(ii) Interior oil-based and solventborne alkyd paints and coatings.

(b) *Minimum biobased content.* The minimum biobased content for all interior paints and coatings products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Interior latex and waterborne alkyd paints and coatings—20 percent.

(2) Interior oil-based and solventborne alkyd paints and coatings—67 percent.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased interior paints and coatings. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased interior paints and coatings.

(d) *Determining overlap with an EPA-designated recovered content product.* Qualifying biobased products within the interior latex and waterborne alkyd paints and coatings subcategory may, in some cases, overlap with the EPA-designated recovered content products: Reprocessed latex paints and consolidated latex paints. USDA is requesting that manufacturers of these qualifying biobased products provide information on the USDA Web site of qualifying biobased products about the intended uses of the product, information on whether or not the product contains any recovered material, in addition to biobased ingredients, and performance standards against which the product has been tested. This information will assist Federal agencies in determining whether or not a qualifying biobased product overlaps with EPA-designated reprocessed latex paints and consolidated latex paints and which product should be afforded the preference in purchasing.

Note to paragraph (d): Biobased interior latex and waterborne alkyd paints and coatings products within this subcategory can compete with similar reprocessed latex paint and consolidated latex paint products with recycled content. Under the Resource Conservation and Recovery Act of 1976, section 6002, the U.S. Environmental Protection Agency designated reprocessed latex paints and consolidated latex paints containing recovered materials as items for which Federal agencies must give preference in their purchasing programs. The designation can be found in the Comprehensive Procurement Guideline, 40 CFR 247.12.

§ 2902.72 Oven and grill cleaners.

(a) *Definition.* Liquid or gel cleaning agents used on high temperature cooking surfaces such as barbeques, smokers, grills, stoves, and ovens to soften and loosen charred food, grease, and residue.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 66 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased oven and grill cleaners. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased oven and grill cleaners.

§ 2902.73 Slide way lubricants.

(a) *Definition.* Products used to provide lubrication and eliminate stick-slip and table chatter by reducing friction between mating surfaces, or slides, found in machine tools.

(b) *Minimum biobased content.* The Federal preferred procurement product must have a minimum biobased content of at least 74 percent, which shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product.

(c) *Preference compliance date.* No later than July 23, 2012, procuring agencies, in accordance with this part, will give a procurement preference for qualifying biobased slide way lubricants. By that date, Federal agencies that have the responsibility for drafting or reviewing specifications for items to be procured shall ensure that the relevant specifications require the use of biobased slide way lubricants.

§ 2902.74 Thermal shipping containers.

(a) *Definitions.* (1) Insulated containers designed for shipping temperature-sensitive materials.

(2) Thermal shipping containers for which Federal preferred procurement applies are:

(i) *Durable thermal shipping container.* These are thermal shipping containers that are designed to be reused over an extended period of time.

(ii) *Non-durable thermal shipping containers.* These are thermal shipping containers that are designed to be used once.

(b) *Minimum biobased content.* The minimum biobased content for all thermal shipping container products shall be based on the amount of qualifying biobased carbon in the product as a percent of the weight (mass) of the total organic carbon in the finished product. The applicable minimum biobased contents for the Federal preferred procurement products are:

(1) Durable thermal shipping containers—21 percent.

(2) Non-durable thermal shipping containers—82 percent.

(c) *Preference compliance date*—(1) *Durable thermal shipping containers.* Determination of the preference compliance date for durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased durable thermal shipping containers.

(2) *Non-durable thermal shipping containers.* Determination of the preference compliance date for non-durable thermal shipping containers is deferred until USDA identifies two or more manufacturers of biobased non-durable thermal shipping containers. At that time, USDA will publish a document in the **Federal Register** announcing that Federal agencies have one year from the date of publication to give procurement preference to biobased non-durable thermal shipping containers.

Dated: July 15, 2011.

Pearlie S. Reed,

Assistant Secretary for Administration, U.S. Department of Agriculture.

[FR Doc. 2011–18478 Filed 7–21–11; 8:45 am]

BILLING CODE 3410–93–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1703

FOIA Fee Schedule Update

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Establishment of FOIA Fee Schedule.

SUMMARY: The Defense Nuclear Facilities Safety Board is publishing its Freedom of Information Act (FOIA) Fee Schedule Update pursuant to the Board's regulations.

DATES: *Effective Date:* July 29, 2011.

FOR FURTHER INFORMATION CONTACT: Brian Grosner, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004–2901, (202) 694–7060.

SUPPLEMENTARY INFORMATION: The FOIA requires each Federal agency covered by the Act to specify a schedule of fees applicable to processing of requests for agency records. 5 U.S.C. 552(a)(4)(A)(i). On May 16, 2011 the Board published for comment in the **Federal Register** its Proposed FOIA Fee Schedule, 76 FR 28194. In response to the notice, one comment was received regarding excessive fees. The Board's 2010 and 2011 FOIA fee schedules are the same; there is no proposed increase.

The Board is now establishing the Fee Schedule. Pursuant to 10 CFR 1703.107(b)(6) of the Board's regulations, the Board's General Manager will update the FOIA Fee Schedule once every 12 months. The previous Fee Schedule Update was published in the **Federal Register** and went into effect on June 15, 2010, 75 FR 39629.

Board Action

Accordingly, the Board issues the following schedule of updated fees for services performed in response to FOIA requests:

DEFENSE NUCLEAR FACILITIES SAFETY BOARD SCHEDULE OF FEES FOR FOIA SERVICES

[Implementing 10 CFR 1703.107(b)(6)]

Search or Review Charge	$77.00 per hour.
Copy Charge (paper)	$.12 per page, if done in-house, or generally available commercial rate (approximately $.10 per page).
Electronic Media	$5.00.
Copy Charge (audio cassette)	$3.00 per cassette.
Duplication of DVD	25.00 for each individual DVD; $16.50 for each additional individual DVD.
Copy Charge for large documents (*e.g.,* maps, diagrams)	Actual commercial rates.

Dated: July 18, 2011.

Brian Grosner,

General Manager.

[FR Doc. 2011–18457 Filed 7–21–11; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0609; Airspace Docket No. 10–AGL–9]

Amendment of Class E Airspace; Drummond Island, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Drummond Island, MI, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Drummond Island Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Drummond Island, MI, creating additional controlled airspace at Drummond Island Airport (76 FR 21826) Docket No. FAA–2010–0609. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Drummond Island Airport, Drummond Island, MI. This action is necessary for the safety and management of IFR operations at the airport. Geographic coordinates are also being updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 U.S. Code. Subtitle 1, 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 for Drummond Island Airport, Drummond Island, MI.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

AGL MI E5 Drummond Island, MI [Amended]

Drummond Island Airport, MI

(Lat. 46°00′34″ N., long. 83°44′38″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Drummond Island Airport, and within 4 miles each side of the 072° bearing from the airport extending from the 7-mile radius to 8.5 miles east of the airport; that airspace extending upward from 1,200 feet above the

surface bounded by long. 83°57′00″ W., on the west; long. 83°26′00″ W., on the east; lat. 46°05′00″ N., on the north; and lat. 45°45′00″ N., on the south, excluding that airspace within Canada.

Issued in Fort Worth, Texas, on July 7, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–18135 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0122; Airspace Docket No. 11–ACE–3]

Amendment of Class E Airspace; Ava, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Ava, MO. Decommissioning of the Bilmart non-directional beacon (NDB) at Ava Bill Martin Memorial Airport, Ava, MO, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 2, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Ava, MO, reconfiguring controlled airspace at Ava Bill Martin Memorial Airport (76 FR 24409) Docket No. FAA–2011–0122. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Ava, MO area. Decommissioning of the Bilmart NDB and cancellation of the NDB approach at Ava Bill Martin Memorial Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 U.S. Code. Subtitle 1, 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 Ava Bill Martin Memorial Airport, Ava, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010 is amended as follows:

* * * * *

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

* * * * *

ACE MO E5 Ava, MO [Amended]

Ava, Bill Martin Memorial Airport, MO
(Lat. 36°58′19″ N., long. 92°40′55″ W.)
Dogwood VORTAC
(Lat. 37°01′24″ N., long. 92°52′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Ava Bill Martin Memorial Airport, and within 1.8 miles each side of the 107° radial of the Dogwood VORTAC extending from the 6.3-mile radius to the VORTAC.

Issued in Fort Worth, Texas, on July 13, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–18185 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–1240; Airspace Docket No. 10–ASW–18]

Establishment of Class E Airspace; Ranger, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Ranger, TX, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Cook Canyon Ranch Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On May 9, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Ranger, TX, creating controlled airspace at Cook Canyon Ranch Airport (76 FR 26658) Docket No. FAA–2010–1240. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Cook Canyon Ranch Airport, Ranger, TX. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 U.S. Code. Subtitle 1, 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 establishes controlled airspace for Cook Canyon Ranch Airport, Ranger, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW TX E5 Ranger, TX [New]

Cook Canyon Ranch Airport, TX
(Lat. 32°25′54″ N., long. 98°35′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Cook Canyon Ranch Airport.

Issued in Fort Worth, Texas, on July 13, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–18179 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0214; Airspace Docket No. 11–ASW–2]

Establishment of Class E Airspace; Hearne, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Hearne, TX, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Hearne Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, October 20, 2011. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On April 19, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish Class E airspace for Hearne, TX, creating controlled airspace at Hearne Municipal Airport (76 FR 21831) Docket No. FAA–2011–0214. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. 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 action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by establishing Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Hearne Municipal

Airport, Hearne, TX. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under 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 U.S. Code. Subtitle 1, 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 establishes controlled airspace for Hearne Municipal Airport, Hearne, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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 Part 71.1 of the Federal Aviation Administration Order 7400.9U, Airspace Designations and Reporting Points, dated August 18, 2010, and effective September 15, 2010, is amended as follows:

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

* * * * *

ASW TX E5 Hearne, TX [New]

Hearne Municipal Airport, TX
(Lat. 30°52′20″ N., long. 96°37′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of Hearne Municipal Airport, and within 2 miles each side of the 002° bearing from the airport extending from the 7.1-mile radius to 10.9 miles north of the airport, and within 2 miles each side of the 182° bearing from the airport extending from the 7.1-mile radius to 11.9 miles south of the airport.

Issued in Fort Worth, Texas, on July 11, 2011.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–18175 Filed 7–20–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0244 Airspace Docket No. 11–AAL–05]

Revision of Class E Airspace; Yakutat, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at the Yakutat Airport, Yakutat, AK. The amendment of eight Standard Instrument Approach Procedures (SIAPs) has made this action necessary to enhance safety and air traffic management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Effective 0901 UTC, October 20, 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: Martha Dunn, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *martha.ctr.dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Tuesday, April 19, 2011, the FAA published a notice of proposed rulemaking in the **Federal Register** to amend Class E airspace to accommodate new SIAPS at Yakutat Airport, Yakutat, AK (76 FR 21832).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. Three comments were received. One commenter noted that the proposed rule incorrectly referred to the Yakutat VORTAC: The correct navigational aid is the Yakutat VOR/DME. The rule has been changed to correct that error. The second commenter suggested that the portion of the proposed Class E airspace overlaying Canadian airspace should be excluded. The FAA has found merit in this and has adjusted the airspace to exclude that area outside of U.S. airspace. The third commenter noted that a portion of the airspace overlies offshore airspace beyond 12 NM from the shoreline (Control 1487L) which should be revised to reflect the change in the 1,200 ft. airspace. The FAA agrees and that change is being incorporated in a separate offshore airspace rulemaking. The FAA also noted that two of the longitudes used in the geographic coordinates for the airspace description were incorrectly rounded. This action corrects that error.

The Class E airspace areas designated as 700/1,200 ft. transition areas are published in paragraph 6005 of FAA Order 7400.9U, *Airspace Designations and Reporting Points,* dated August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace to accommodate eight amended standard instrument approach procedures at the Yakutat Airport, Yakutat, AK. This action provides adequate controlled airspace upward from 700 feet and 1,200 feet above the surface for the safety and management of IFR operations at Yakutat Airport. A portion of the 1,200 foot controlled airspace extends over Offshore Airspace Control 1487L which has been amended in a separate rulemaking. With the exception

of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

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. 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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority because it creates additional Class E airspace at the Yakutat Airport, Yakutat, AK for the safe and efficient use of the National Airspace System.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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, and 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.

* * * * *

AAL AK E5 Yakutat, AK [Revised]

Yakutat Airport, AK
(Lat. 59°30′12″ N., long. 139°39′37″ W.)
Yakutat VOR/DME
(Lat. 59°30′39″ N., long. 139°38′53″ W.)

That airspace extending upward from 700 feet above the surface within the area bounded by lat. 59°47′42″ N., 139°58′48″ W., to lat. 59°37′33″ N., long. 139°40′54″ W., then along the 7 mile radius of the Yakutat VOR/DME clockwise to 59°28′54″ N., long. 139°25′36″ W., to lat. 59°20′16″ N., long. 139°10′20″ W., to lat. 59°02′49″ N. long. 139°47′45″ W., to lat. 59°30′15″ N. long. 140°36′43″ W., to the point of beginning, excluding that area outside 12 miles from the shoreline within Gulf of Alaska Low Control Area; and that airspace extending upward from 1,200 feet above the surface within a 75-mile radius of the Yakutat VOR/DME, excluding that area extending over Canada, and that area outside 12 miles from the shoreline within Control 1487L.

Issued in Anchorage, AK, on June 30, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–17973 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0444; Airspace Docket No. 11–AAL–07]

Revision of Class E Airspace; Talkeetna, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Class E airspace at Talkeetna, AK, to accommodate the amendment of four Standard Instrument Approach Procedures and the Obstacle Departure Procedure at Talkeetna Airport. The FAA is taking this action to enhance safety and management of Instrument Flight Rules (IFR) operations at the Talkeetna Airport.

DATES: Effective 0901 UTC, October 20, 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: Martha Dunn, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Martha.ctr.Dunn@faa.gov.* Internet address: *http://www.faa.gov/about/office_org/headquarters_offices/ato/service_units/systemops/fs/alaskan/rulemaking/.*

SUPPLEMENTARY INFORMATION:

History

On Thursday, May 12, 2011, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** to revise Class E airspace at Talkeetna, AK (76 FR 27619).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. One comment was received noting that the longitude of the Talkeetna VOR/DME was incorrect. The FAA agrees and will correct the error.

The Class E airspace areas are published in paragraphs 6002 and 6005, respectively, of FAA Order 7400.9U, *Airspace Designations and Reporting Points,* signed August 18, 2010, and effective September 15, 2010, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order. With the exception of editorial changes, and the changes described above, this rule is the same as that proposed in the NPRM.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revising Class E airspace at the Talkeetna Airport, Talkeetna, AK, to accommodate four amended standard instrument approach procedures and the revised obstacle departure procedure. This Class E surface airspace and Class E airspace extending upward from 700 and 1,200 feet above the surface is necessary for the safety and management of IFR operations at the airport.

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. 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. Because this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 1, 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 1, Section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with prescribing regulations to ensure the safe and efficient use of the navigable airspace. This regulation is within the scope of that authority because it creates Class E airspace sufficient in size to contain aircraft executing instrument procedures for the Talkeetna Airport and represents the FAA's continuing effort to safely and efficiently use the navigable airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR 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,* signed August 18, 2010, and effective September 15, 2010, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

AAL AK E2 Talkeetna, AK [Revised]

Talkeetna Airport, AK
(Lat. 62°19′14″ N., long. 150°05′37″ W.)
Talkeetna VOR/DME
(Lat. 62°17′55″ N., long. 150°06′20″ W.)

Within a 5-mile radius of the Talkeetna Airport, and within 2.5 miles each side of the Talkeetna VOR/DME 191° radial and within 1 mile each side of the Talkeetna VOR/DME 207° radial extending from the 5-mile radius to 8.4 miles southwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Supplement Alaska (Airport/Facility Directory).

* * * * *

Paragraph 6005 Class E Airspace Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

AAL AK E5 Talkeetna, AK [Revised]

Talkeetna Airport, AK
(Lat. 62°19′14″ N., long. 150°05′37″ W.)
Talkeetna VOR/DME
(Lat 62°17′55″ W., long. 150°06′20″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Talkeetna Airport and within 3.2 miles each side of the Talkeetna VOR/DME 191° radial and within 2.5 miles each side of the Talkeetna VOR/DME 207° radial extending from the 7.5-mile radius to 12.4 miles southwest of the airport and that airspace extending upward from 1,200 feet above the surface within a 72-mile radius of Talkeetna Airport.

Issued in Anchorage, AK, on July 12, 2011.

Michael A. Tarr,

Manager, Alaska Flight Services.

[FR Doc. 2011–18451 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 417

[Docket No.: FAA–2011–0181; Amendment No. 417–2]

RIN 2120–AJ84

Launch Safety: Lightning Criteria for Expendable Launch Vehicles

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; Confirmation of effective date.

SUMMARY: This action confirms the effective date of July 25, 2011, for the direct final rule issued June 8, 2011. No comments were received on this final rule.

This action amends flight criteria for mitigating against naturally occurring lightning and lightning triggered by the flight of an expendable launch vehicle through or near an electrified environment in or near a cloud. These changes also increase launch availability and implement changes already adopted by the United States Air Force.

DATES: The direct final rule published June 8, 2011 (76 FR 33139) is effective on July 25, 2011.

ADDRESSES: The complete docket for the direct final rule, Docket No. FAA–2011–0181, may be examined at *http://www.regulations.gov* at any time or go to Docket operations in Room W12–140 West Building, Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this rule contact Karen Shelton-Mur, Office of Commercial Space Transportation, AST–300, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7985; facsimile (202) 267–5463, e-mail *Karen.Shelton-Mur@faa.gov.*

For legal questions concerning this rule contact Laura Montgomery, Senior Attorney for Commercial Space Transportation, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3150; facsimile (202) 267–7971, e-mail *laura.montgomery@faa.gov.*

SUPPLEMENTARY INFORMATION:

Direct Final Rule Procedure

The FAA anticipated that this regulation would not result in adverse or negative comment and therefore is issued as a direct final rulemaking. Because the changes to the lightning commit criteria will increase launch availability and are already for U.S. Government launchs at Air Force launch ranges, the public interest is well served by this rulemaking.

The comment period closed July 8, 2011, and the FAA received no comments.

Conclusion

In light of the fact that no comments were submitted in response to the direct final rule, the FAA has determined that no further rulemaking action is necessary. Therefore, Amendment No. 417–2 takes effect as of July 25, 2011.

Issued in Washington, DC on July 18, 2011.

Dennis R. Pratte,

Acting Director, Office of Rulemaking.

[FR Doc. 2011–18586 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 321

Mortgage Acts and Practices—Advertising

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rule.

SUMMARY: Pursuant to the 2009 Omnibus Appropriations Act (Omnibus Appropriations Act), as clarified by the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit CARD Act), the Commission issues this Final Rule and Statement of Basis and Purpose (SBP) relating to unfair or deceptive acts and practices that may occur with regard to mortgage advertising. This Final Rule, among other things: Prohibits any misrepresentation in any commercial communication regarding any term of any mortgage credit product; and imposes certain recordkeeping requirements.

DATES: This final rule is effective August 19, 2011.

ADDRESSES: Requests for copies of this Rule and this SBP should be sent to: Public Reference Branch, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Room 130, Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the Final Rule and SBP, are available at *http://www.ftc.gov*. On July 21, 2011, the Commission's rulemaking authority under the Omnibus Appropriations Act transfers to the Consumer Financial Protection Bureau (contact information available at *http://www.consumerfinance.gov*).

FOR FURTHER INFORMATION CONTACT: Laura Johnson or Carole Reynolds, Attorneys, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

On March 11, 2009, President Obama signed the Omnibus Appropriations Act.[1] Section 626 of that Act directed the Commission to commence, within 90 days of enactment, a rulemaking proceeding with respect to mortgage loans.[2] Section 626 also directed the FTC to use notice and comment procedures under Section 553 of the Administrative Procedure Act [3] to promulgate these rules.[4]

On May 22, 2009, President Obama signed the Credit CARD Act.[5] Section 511 of this statute clarified the Commission's rulemaking authority under the Omnibus Appropriations Act.[6]

1. Covered Acts and Practices

Section 511 of the Credit CARD Act specified that the FTC rulemaking ''shall relate to unfair or deceptive acts or practices regarding mortgage loans, which may include unfair or deceptive acts or practices involving loan modification and foreclosure rescue services.'' [7] The Omnibus Appropriations Act, as clarified by the Credit CARD Act, does not otherwise specify what the Commission should include in, or exclude from, a rule, but rather directs the FTC to issue mortgage rules that ''relate to'' unfairness or deception.[8]

Section 5 of the FTC Act broadly proscribes unfair or deceptive acts or practices in or affecting commerce. An act or practice is deceptive if there is a representation, omission of information, or practice that is likely to mislead consumers who are acting reasonably under the circumstances, and the representation, omission, or practice is one that is material, *i.e.,* likely to affect consumers' decisions to purchase or use the product or service at issue.[9] Section 5(n) of the FTC Act sets forth a three-part test to determine whether an act or practice is unfair. First, the practice must be one that causes or is likely to cause substantial injury to consumers. Second, the injury must not be outweighed by countervailing benefits to consumers or to competition. Third, the injury must be one that consumers could not reasonably have avoided.[10]

Accordingly, the Commission interprets the Omnibus Appropriations Act, as clarified by the Credit CARD Act, to allow it to issue rules that prohibit or restrict unfair or deceptive conduct or that are reasonably related to the goal of preventing unfair or deceptive practices. The FTC notes, however, that all of the conduct prohibited by the Final Rule is itself deceptive.

2. Covered Entities

Section 511 of the Credit CARD Act also clarified that the Commission's rulemaking authority is limited to entities over which the FTC has jurisdiction under the FTC Act.[11] Under the FTC Act, the Commission has jurisdiction over any person, partnership, or corporation that engages in unfair or deceptive acts or practices in or affecting commerce, except, among others: [12] banks,[13] savings and loan

[1] Omnibus Appropriations Act, 2009, Public Law 111–8, 123 Stat. 524 (Omnibus Appropriations Act).

[2] *Id.* § 626(a), 123 Stat. at 678.

[3] 5 U.S.C. 553.

[4] Omnibus Appropriations Act § 626(a). Because Congress directed the Commission to use APA rulemaking procedures, the FTC did not use the procedures set forth in Section 18 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 57a.

[5] Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, 123 Stat. 1734 (Credit CARD Act).

[6] *Id.* § 511.

[7] *Id.* § 511(a)(1)(B). In a separate rulemaking, the Commission issued a final rule with respect to mortgage assistance relief services. *See* Mortgage Assistance Relief Services (MARS), Final Rule, 75 FR 75092 (Dec. 1, 2010), *available at http://www.ftc.gov/os/fedreg/2010/december/R911003mars.pdf.*

[8] Credit CARD Act § 511(a)(1)(B).

[9] Federal Trade Commission Policy Statement on Deception, *appended to In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 174–84 (1984) (Deception Policy Statement).

[10] 15 U.S.C. 45(n). Additionally, Section 5(n) of the FTC Act provides that ''[i]n determining whether an act or practice is unfair, the Commission may consider established public policies as evidence to be considered with all other evidence. Such public policy considerations may not serve as a primary basis for such determination.''

[11] Credit CARD Act § 511(a)(1)(C).

[12] *See* 15 U.S.C. 44, 45(a)(2).

[13] The FTC Act defines ''banks'' by reference to a listing of certain distinct types of depository institutions. *See* 15 U.S.C. 44, 57a(f)(2). That list includes: National banks, Federal branches of foreign banks, member banks of the Federal Reserve System, branches and agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, banks insured by the Federal Deposit Insurance Corporation (FDIC), and insured state branches of foreign banks. The Commission has jurisdiction over entities that are affiliated with banks, such as parent or subsidiary companies, that are not themselves banks. This jurisdiction is held concurrently with the Federal bank regulatory agencies (the Board of Governors of the Federal Reserve System (Federal Reserve Board or Board), the Office of the Comptroller of the Currency (OCC), the FDIC, and the Office of Thrift Supervision (OTS)) and the National Credit Union Administration (NCUA) as to their respective institutions. *See* Gramm-Leach-Bliley Act, Public Law 106–102, § 133(a), 113 Stat. 1338, 1383 (1999) (codified at 15 U.S.C. 41 note (a)); *Minnesota* v. *Fleet Mortg. Corp.,* 181 F. Supp. 2d 995 (D. Minn. 2001). The FTC also has jurisdiction over non-bank entities that provide services to or on behalf of a bank, such as credit card marketing. *See, e.g., FTC* v. *CompuCredit Corp.,* No. 08–1976, at 6–15 (N.D. Ga. Oct. 8, 2008) (magistrate judge's non-final report and recommendation) (finding that the FTC has jurisdiction under FTC Act against entity that contracted to provide services to a bank); *FTC* v. *Am. Std. Credit Sys.,* 874 F. Supp. 1080, 1086 (C.D. Cal. 1994) (dismissing argument that entity that contracted to perform credit card marketing and

institutions, Federal credit unions,[14] non-profits,[15] and common carriers. The Final Rule does not cover the practices of entities that are excluded from the FTC's jurisdiction.

3. Enforcement

The Omnibus Appropriations Act, as clarified by the Credit CARD Act, also permits both the Commission and the states to enforce the rules the FTC issues.[16] The Commission can use its powers under the FTC Act to investigate and enforce such rules, and the FTC can seek civil penalties under the FTC Act against those who violate them. In addition, states can enforce the rules by bringing civil actions in Federal district court or another court of competent jurisdiction to obtain civil penalties and other relief. Before bringing such an action, however, states must give 60 days advance notice to the Commission or other ''primary federal regulator'' of the proposed defendant,[17] and the regulator has the right to intervene in the action.

4. The Dodd-Frank Act

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[18] The Dodd-Frank Act made substantial changes in the Federal regulatory framework for providers of financial services. Among the changes, the Dodd-Frank Act will transfer the Commission's rulemaking authority under the Omnibus Appropriations Act to a new Bureau of Consumer Financial Protection (CFPB) [19] on July 21, 2011, the ''designated transfer date'' set by the Treasury Department.[20] In addition, on the designated transfer date, the FTC's authority to ''issue guidelines'' under the Omnibus Appropriations Act will transfer to the CFPB.[21] Both the Commission and the CFPB, however, will have authority to bring law enforcement actions and seek civil penalties against specific categories of ''nondepository covered persons'' to enforce the rules promulgated under the Omnibus Appropriations Act, including this Final Rule.[22]

B. The Rulemaking and Public Comments Received

On June 1, 2009, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (ANPR) soliciting comments on the contours of a possible rule that would prohibit or restrict unfair and deceptive acts and practices that may occur throughout the life-cycle of a mortgage loan,[23] *i.e.,* in the advertising and marketing of the loan, at the time of loan origination, in the home appraisal process, and during the servicing of the loan. The ANPR described these services generically as ''Mortgage Acts and Practices,'' and the rulemaking proceeding was entitled the Mortgages Acts and Practices (MAP) Rulemaking.[24]

On September 30, 2010, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) relating to unfair or deceptive acts and practices that may occur with regard to mortgage advertising, the MAP B Advertising Rule (proposed rule).[25] Among other things, the proposed rule prohibited any misrepresentation in any commercial communication regarding any term of any mortgage credit product, and it imposed certain recordkeeping requirements.

In response to the NPRM, the Commission received a total of 22 comments.[26] Commenters included industry trade associations or groups, credit unions, state credit union regulators, a not-for-profit law firm, a real estate settlement services firm, and a group of state banking and consumer credit regulators. The Commission also received five comments from individuals. Most of the comments expressed support for FTC regulatory action or particular aspects of the proposed rule. These comments are discussed below.[27]

II. Mortgage Advertising Practices

A. Overview

As discussed in the ANPR and NPRM, the mortgage life-cycle begins when a consumer initially shops for a mortgage, whether to purchase a home or real property,[28] refinance an existing mortgage, or obtain a home equity loan or line of credit (known as a HELOC) based on the consumer's equity in the home.[29] Consumers may consider obtaining diverse types of mortgage products. The loan may be a forward mortgage, the most prevalent type of loan, in which the homeowner borrows funds and remits payments for principal, interest, and, in some cases, other charges. Alternatively, the loan may be a reverse mortgage, in which senior citizens borrow funds secured by their homes. With a reverse mortgage, the borrower is not required to repay the debt as long as he or she remains in the home; and the loan is not due until the homeowner moves out of or sells the home, dies, or fails to satisfy certain loan conditions.[30] Forward mortgages may be traditional, such as fully amortizing 30-year fixed-rate or

other services for a bank is not subject to FTC Act). Effective July 21, 2011, the FTC and the Bureau of Consumer Financial Protection (CFPB) will share concurrent enforcement authority over specific categories of ''nondepository covered persons.'' *See infra* Part I.A.4.

[14] The exclusion is limited to Federal credit unions; thus, the FTC has jurisdiction over state-chartered credit unions (whether or not they have Federal insurance), among others. *See infra* note 127 and accompanying text.

[15] Section 4 of the FTC Act, 15 U.S.C. 44, specifies that the Commission's jurisdiction over ''corporations'' is limited to entities that are organized to carry on business for their own profit or that of their members. Thus, the non-profit exemption does not apply to ostensible non-profits that operate for the profit of their members. *See, e.g., Am. Med. Ass'n* v. *FTC,* 638 F.2d 443 (2d Cir. 1980), *aff'd by an equally divided court,* 445 U.S. 676 (1982); *FTC* v. *AmeriDebt, Inc.,* 343 F. Supp. 2d 451 (D. Md. 2004).

[16] Omnibus Appropriations Act § 626(b); Credit CARD Act § 511(a)(1)(B).

[17] Effective July 21, 2011, states must provide the advance notice to the CFPB or Commission, as appropriate. *See infra* Part. I.A.4.

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

[19] *Id.* § 1061.

[20] *See* CFPB, Designated Transfer Date, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act § 1062.

[21] Dodd-Frank Act § 1061.

[22] *See* Dodd-Frank Act §§ 1024, 1061, 1097.

[23] The Omnibus Appropriations Act and the Credit CARD Act use the term ''loan'' in referring to mortgage credit generally and do not limit that term in any way. Accordingly, this SBP and Final Rule use the term ''loan'' to refer to any form of mortgage credit.

[24] Mortgage Acts and Practices (MAP), ANPR, 74 FR 26118 (June 1, 2009).

[25] *See* MAP B Advertising, NPRM, 75 FR 60352 (Sept. 30, 2010).

[26] The comments submitted in response to the NPRM are available at *http://www.ftc.gov/os/comments/mapadrule/index.shtm.* A list of those who submitted comments appears following Part V of this SBP.

[27] *See infra* Part III.

[28] Traditional mortgages are considered ''closed-end credit,'' generally consisting of installment financing where the amount borrowed and repayment schedule are set at the transaction's outset. The Truth in Lending Act (TILA), 15 U.S.C. 1601–1666j, and its implementing Regulation Z, 12 CFR part 226, set various advertising and other requirements for closed-end credit. *See, e.g.,* 12 CFR 226.17–.24.

[29] HELOCs typically are ''open-end credit,'' which TILA defines as credit extended to a consumer under a plan in which: (1) The consumer reasonably contemplates repeated transactions; (2) the creditor may impose a finance charge from time to time on the outstanding unpaid balance; and (3) the amount of credit that may be extended to the consumer during the plan's term is generally made available to the extent that any unpaid balance is repaid. *See* 15 U.S.C. 1602(i); 12 CFR 226.2(a)(10) and (20).

[30] *See generally* 12 CFR 226.33 (reverse mortgages under Regulation Z) and U.S. Department of Housing and Urban Development (HUD), Glossary, definition of ''reverse mortgage,'' *available at http://www.hud.gov/offices/hsg/sfh/buying/glossary.cfm.*

adjustable rate mortgages (ARMs),[31] or nontraditional.[32]

Consumers receive information about mortgages through many different channels of communication. Some consumers seek out mortgage information on their own, for example, on the Internet or by contacting a real estate broker, mortgage lender, mortgage broker, or others. Marketers and advertisers widely disseminate mortgage advertisements to consumers through print media (such as newspapers and magazines), television, radio, the Internet, billboards, and other methods. Marketers and advertisers also send targeted information to particular consumers through direct mail or electronic communications such as e-mail or text messages.

Many types of entities market and advertise mortgage products. Mortgage lenders, mortgage brokers, mortgage servicers, and real estate brokers advertise and market mortgage products. In addition, advertising agencies, home builders, lead generators,[33] rate aggregators,[34] and others also may market and advertise mortgage products to consumers. Mortgage lenders and servicers are particularly likely to market products to their current customers, in addition to prospective customers.

B. Deception in Mortgage Advertising

Advertising and marketing can provide consumers with valuable information about mortgage options, costs, and features. This information is critical to the decisions consumers make throughout the mortgage origination process, especially because mortgage products are typically complex.[35] Information is useful for decision making, however, only if it is truthful and non-misleading.[36] Preventing and deterring deception in advertisements for mortgages, therefore, is a primary objective of FTC law enforcement and of the Final Rule.

The elements of deception are set forth in the FTC's Deception Policy Statement of 1984. An act or practice is deceptive if: (1) There is a representation, omission of information, or practice that is likely to mislead consumers acting reasonably under the circumstances; and (2) that representation, omission, or practice is material to consumers.[37]

A representation may be express or implied. ''Express claims directly represent the fact at issue, while implied claims do so in an oblique or indirect way.'' [38] Whether an implied claim is made depends on the overall net impression that consumers take away from an advertisement, based on all of its elements (language, pictures, graphics, *etc.*).[39] The FTC evaluates whether consumers' impressions or interpretations of a representation or omission are reasonable. Reasonableness is evaluated based on the sophistication and understanding of consumers in the group to which the representation is targeted, which may be a general audience or a specific group, such as children or the elderly.[40] A claim may be susceptible to more than one reasonable interpretation, and if one such interpretation is misleading, then the advertisement is deceptive, even if other, non-deceptive interpretations are possible.[41]

A disclaimer or qualifying statement may correct a misleading impression, but only if it is sufficiently clear and prominent to convey the qualifying information effectively, *i.e.,* it is both noticed and understood by consumers. ''[I]n many circumstances, reasonable consumers do not read the entirety of an ad or are directed away from the importance of the qualifying phrase by the acts or statements of the seller;'' [42] thus, a fine print disclosure at the bottom of a print advertisement or a brief video superscript in a television advertisement is unlikely to qualify a claim effectively.[43] Similarly, because consumers ''may glance only at the headline'' of an advertisement, ''accurate information in the text may not remedy a false headline.'' [44]

A representation, omission, or practice is material if it is likely to affect a consumer's choice of or conduct regarding a product.[45] If consumers are likely to have chosen differently but for the claim, the claim is likely to have caused consumer injury.[46] Express claims are presumed material.[47] Similarly, information regarding the cost of a product or service is presumed material.[48] Intentional implied claims,[49] and claims about the purpose and

[31] In a fully amortizing loan, the borrower pays principal and the full amount of interest that is due each month throughout the life of the loan.

[32] Nontraditional mortgages have included, for example, interest-only (I/O) loans and payment option ARMs (option ARMs). I/O loans involve an initial loan period in which the borrower pays only the interest accruing on the loan balance; after the initial period, the borrower either makes increased payments of principal and interest or remits a large payment, sometimes referred to as a ''balloon payment.'' Option ARMs offer borrowers several choices each month during the loan's introductory period, including a minimum payment that is smaller than the interest accruing on the principal. After the introductory period, the loan is recast, and the borrower's payments increase to amortize and repay principal and the adjustable interest rate over the remaining loan term. *See generally* FTC, Comment to Jennifer L. Johnson, Secretary, Board of Governors of the Federal Reserve System (Sept. 14, 2006), at 5–13 (providing comments on the home equity lending market and summarizing the Commission's May 2006 alternative mortgage workshop, Protecting Consumers in the New Mortgage Marketplace), *available at http://www.ftc.gov/opa/2006/09/fyi0661.shtm* (FTC Comment on Home Equity Lending and Alternative Mortgage Workshop).

[33] Lead generators are business entities that provide, in exchange for consideration, consumer information to a seller or telemarketer for use in the marketing of goods or services. *See, e.g., Quik Payday, Inc.* v. *Stork,* 549 F.3d 1302, 1304 (10th Cir. 2008); *FTC* v. *Connelly,* No. SA CV 06–701 DOC (RNBx), 2006 U.S. Dist. LEXIS 98263, at *11 (C.D. Cal. Dec. 20, 2006); *United States* v. *Ameriquest Mortg. Co.,* No. 8:07-cv-01304 CJC–MLG (C.D. Cal. 2007) (stipulated judgment and order).

[34] Rate aggregators regularly collect and publish rates and other information from numerous mortgage lenders, mortgage brokers, or other sources. Consumers typically can compare mortgage credit product terms for free by searching or viewing this information sorted by rate, loan amount, mortgage credit product, or other criteria. Rate aggregators may supply the lenders' or brokers' contact information, so the consumer can reach lenders or brokers directly, or they may act as lead generators and provide the consumer's information to lenders or brokers.

[35] This is particularly true for nontraditional mortgages, the terms of which are often unfamiliar to consumers. *See generally* FTC Comment on Home Equity Lending and Alternative Mortgage Workshop, *supra* note 32.

[36] *See* Deception Policy Statement, *supra* note 9, at 176–77.

[37] *See id.* at 175–183; *see also FTC* v. *Tashman,* 318 F.3d 1273, 1277 (11th Cir. 2003); *FTC* v. *Gill,* 265 F.3d 944, 950 (9th Cir. 2001); *FTC* v. *QT, Inc.,* 448 F. Supp. 2d 908, 957 (N.D. Ill. 2006), *aff'd,* 512 F.3d 858 (7th Cir. 2008); *FTC* v. *Think Achievement Corp.,* 144 F. Supp. 2d 993, 1009 (N.D. Ind. 2000); *FTC* v. *Minuteman Press,* 53 F. Supp. 2d 248, 258 (E.D.N.Y. 1998).

[38] *FTC* v. *QT, Inc.,* 448 F. Supp. 2d at 957.

[39] *See FTC* v. *Cyberspace.com, LLC,* 453 F.3d 1196, 1200 (9th Cir. 2006) (''A solicitation may be likely to mislead by virtue of the net impression it creates even though the solicitation also contains truthful disclosures.''); *FTC* v. *Gill,* 265 F.3d at 956 (affirming deception finding based on ''overall 'net impression' '' of statements); *Removatron Int'l Corp.* v. *FTC,* 884 F.2d 1489, 1497 (1st Cir. 1989) (advertisement was deceptive despite written qualification); *Thompson Med. Co.* v. *FTC,* 791 F.2d 189, 197 (DC Cir. 1986) (literally true statements may nonetheless be deceptive); *FTC* v. *QT, Inc.,* 448 F. Supp. 2d at 958.

[40] *See* Deception Policy Statement, *supra* note 9, at 177–79.

[41] *See id.* at 178.

[42] *Id.* at 181.

[43] *See, e.g., id.* at 180; *see also In re Stouffer Food Corp.,* 118 F.T.C. 746 (1994); *In re Kraft, Inc.,* 114 F.T.C. 40, 124 (1991), *aff'd,* 970 F.2d 311 (7th Cir. 1992).

[44] Deception Policy Statement, *supra* note 9, at 180.

[45] *See Kraft, Inc.* v. *FTC,* 970 F.2d 311, 322 (7th Cir. 1992); *In re Cliffdale Assocs., Inc.,* 103 F.T.C. 110, 165 (1984); *see also FTC* v. *SlimAmerica, Inc.,* 77 F. Supp. 2d 1263, 1272 (S.D. Fla. 1999).

[46] *See* Deception Policy Statement, *supra* note 9, at 183.

[47] *See FTC* v. *Pantron I Corp.,* 33 F.3d 1088, 1095–96 (9th Cir. 1994).

[48] *See In re Peacock Buick,* 86 F.T.C. 1532, 1562 (1975), *aff'd,* 553 F.2d 97 (4th Cir. 1977); Deception Policy Statement, *supra* note 9, at 182–83.

[49] *See In re Thompson Med. Co., Inc.,* 104 F.T.C. 648, 816 (1984), *aff'd,* 791 F.2d 189 (DC Cir. 1986).

efficacy of a product or service,[50] are also presumed to be material.

C. Other Mortgage Advertising Requirements [51]

In addition to the FTC Act, mortgage advertisers and marketers are subject to TILA (including the Home Ownership and Equity Protection Act (HOEPA) [52]) and Regulation Z, among other legal requirements.[53] In July 2008, the Federal Reserve Board issued many new mortgage advertising rules under Regulation Z; these rules took effect on October 1, 2009.[54]

The states also have enacted various laws or regulations that address aspects of deceptive mortgage advertising practices,[55] including laws implementing the Federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act), which requires a nationwide licensing and/or registration system for mortgage loan originators.[56]

None of these Federal or state statutes or regulations duplicates the specificity and breadth of practices, and diversity of entities,[57] covered in the Final Rule.

D. Consumer Protection Problems in Mortgage Advertising

The FTC has substantial law enforcement experience with mortgage advertising practices. Since 1995, the Commission has brought 18 law enforcement actions against individuals or companies that allegedly engaged in unfair or deceptive practices or violations of TILA in mortgage advertising.[58] These actions have targeted large and small mortgage lenders, mortgage brokers, and others throughout the country.[59] The cases have involved advertisements and marketing materials in various media, including print advertisements,[60] unsolicited e-mails,[61] direct mail marketing,[62] Internet advertisements and Web sites,[63] telemarketing,[64] and in-person sales presentations.[65] The alleged violations have included deceptive claims—often made to subprime borrowers—about key terms and other aspects of the loans, such as:

- Misrepresentations of the loan amount or the amount of cash disbursed; [66]
- Claims for loans with specified terms, when no loans with those terms were available from the advertiser; [67]
- Claims of low ''teaser'' rates and payment amounts, without disclosing that the rates and payments would increase substantially after a limited period of time; [68]
- Misrepresentations that rates were fixed for the full term of the loan; [69]
- Misrepresentations about, or failure to adequately disclose, the existence of a prepayment penalty [70] or large balloon payment due at the end of the loan; [71]
- Claims about the monthly payment amounts that the borrower would owe, without disclosing the existence, cost, and terms of credit insurance products ''packed'' into the loan; [72]

[50] *Novartis Corp.* v. *FTC,* 223 F.3d 783, 786–87 (DC Cir. 2000).

[51] This discussion is not intended as a comprehensive list of all potentially applicable mortgage advertising and marketing laws.

[52] 15 U.S.C. 1639.

[53] For a brief summary of the advertising requirements under TILA and Regulation Z, see MAP—Advertising, NPRM, 75 FR 60352, 60356–57 (Sept. 30, 2010). Other requirements include mortgage advertising mandates under the Helping Families Save Their Homes Act of 2009, Public Law 111–22, § 203, 123 Stat. 1632, 1643 (codified at 12 U.S.C. 5201 note), which HUD enforces, and advertising regulations and guidance for Federal Housing Administration (FHA) programs, which HUD has issued. For example, FHA-approved lenders or mortgagees must use their HUD-registered business names in advertisements and promotional materials for FHA programs and maintain copies of their materials for two years. *See* 75 FR 20718 (Apr. 20, 2010) (codified at 24 CFR 202). Lenders and others are permitted to distribute the FHA and fair housing logos in marketing materials to prospective FHA borrowers. HUD-approved mortgagees are required to establish procedures for compliance with FHA program requirements, including to avoid engaging in false or misrepresentative advertising. *See* HUD Mortgagee Letters 2009–02 and 2009–12, *available at http://www.hud.gov/offices/adm/hudclips/letters/mortgagee/2009ml.cfm; see also infra* note 124 (discussing NCUA advertising regulations).

[54] *See* 73 FR 44522, 44599–602 (July 30, 2008) (codified generally at 12 CFR 226.16, 226.24). The Board promulgated some of these rules under Section 129(*l*)(2) of TILA, 15 U.S.C. 1639(*l*)(2), and others under Section 105 of TILA, 15 U.S.C. 1604. The Commission has authority to obtain civil penalties for violations of rules that the Board promulgates under Section 129(*l*)(2), but does not have specific authority to obtain civil penalties for violations of rules that the Board promulgates under Section 105.

On August 16, 2010, the Board proposed additional protections and disclosure requirements for mortgage advertisements. *See* Press Release, Board, *Federal Reserve Board Proposes Enhanced Consumer Protections and Disclosures for Home Mortgage Transactions, available at http://www.federalreserve.gov/newsevents/press/bcreg/20100816e.htm* (Aug. 16, 2010). The Board subsequently announced that it does not expect to finalize this proposal prior to the July 2011 date for transfer of rulemaking authority to the CFPB. *See* Press Release, Board, *available at http://www.federalreserve.gov/newsevents/press/bcreg/20110201a.htm* (Feb. 1, 2010).

[55] State advertising requirements differ from one another in the practices, types of credit, and entities covered. *See, e.g.,* Me. Rev. Stat. Ann. tit. 9–A, 9–301 (2010); Md. Code Regs. 09.03.06.05 (2010); Nev. Rev. Stat. Ann. 645B.196 (2010); N.Y. Bank. Law 595–a (Consol. 2010).

[56] Title V of the Housing and Economic Recovery Act of 2008, Public Law 110–289 (2008) (codified at 12 U.S.C. 5101). After the SAFE Act's enactment on July 30, 2008, the states moved to enact or amend laws to license mortgage loan originators. *See generally http://www.csbs.org; see also* HUD SAFE Mortgage Licensing Act, *available at http://hud.gov/offices/hsg/rmra/safe/sfea.cfm.* State SAFE laws address advertising in different ways. *See, e.g.,* S.B. 948, 2009 Gen. Assem., Reg. Sess. (Conn. 2009); S.B. 1218, 25th Leg., 1st Spec. Sess. (Haw. 2009); H.B. 4011, 96th Gen. Assem., Reg. Sess. (Ill. 2009); A.B. 3816, 213th Leg., 2nd Ann. Sess. (N.J. 2009). The Federal banking agencies and Farm Credit Administration have also implemented a registration system and other requirements for mortgage loan originators, in connection with the SAFE Act. *See* 75 FR 51623 (Aug. 23, 2010); *see also* 76 FR 6185 (Feb. 3, 2011).

[57] *See infra* Part III.B.4.

[58] *See* Table B—List of FTC Mortgage Advertising Enforcement Actions, *infra.*

[59] *See, e.g., FTC* v. *Mortgages Para Hispanos.com Corp.,* No. 4:06-cv-19 (E.D. Tex. 2006); *FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004); *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 GLT (ANx) (C.D. Cal. 2004); *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002); *United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002); *FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001); *FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000).

[60] *See, e.g., FTC* v. *Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (N.D. Ill. 2008); *FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004).

[61] *See, e.g., FTC* v. *30 Minute Mortg., Inc.,* No. 03–60021 (S.D. Fla. 2003); *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 GLT (ANx) (C.D. Cal. 2004).

[62] *See, e.g., In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009); *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009); *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 GLT (ANx) (C.D. Cal. 2004); *FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000); *United States* v. *Unicor Funding, Inc.,* No. SACV99–1228 (C.D. Cal. 1999); *FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001); *FTC* v. *Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (N.D. Ill. 2008); *In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000).

[63] *See, e.g., In re Shiva Venture Group, Inc.,* F.T.C. Dkt. No. C–4250 (2009); *FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004).

[64] *See, e.g., FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000).

[65] *See, e.g., id.; FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001).

[66] *See, e.g., id.; FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002); *United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002); *In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000).

[67] *See, e.g., FTC* v. *30 Minute Mortg., Inc.,* No. 03–60021 (S.D. Fla. 2003).

[68] *See, e.g., In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009); *In re Shiva Venture Group, Inc.,* F.T.C. Dkt. No. C–4250 (2009); *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009). The FTC also sent over 200 warning letters in 2007 to mortgage lenders, mortgage brokers, and media outlets regarding mortgage advertising claims, including teaser rates, that could be deceptive or violate TILA. *See* Press Release, FTC, *FTC Warns Mortgage Advertisers and Media That Ads May Be Deceptive* (Sept. 11, 2007), *available at http://www.ftc.gov/opa/2007/09/mortsurf.shtm.*

[69] *See, e.g., In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009).

[70] *See, e.g., FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 (GLT (ANx) C.D. Cal. 2004); *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002).

[71] *See, e.g., FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002).

[72] *See, e.g., FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001). The complaint in that case alleged, among other things, that the defendants included credit insurance products in the loan package without the borrower's knowledge.

• Claims that the loans were amortizing, when, in fact, they involved interest-only transactions; [73]

• Claims of mortgage payment amounts that failed to include loan fees and closing costs of the kind typically included in loan amounts; [74]

• False or misleading savings claims in high loan-to-value loans; [75]

• False or misleading claims regarding the terms or nature of interest rate lock-ins; [76]

• False claims that an entity was a national mortgage lender; [77]

• Failure to disclose adequately that the advertiser, not the consumer's current lender, was offering the mortgage; [78] and

• False or misleading claims that consumers were ''pre-approved'' for mortgage loans.[79]

Numerous states also have brought enforcement actions under state laws alleging deceptive mortgage advertising and marketing, challenging misrepresentations about: (1) The lack of closing costs; [80] (2) low fixed or teaser rates or payments; [81] (3) the advertiser's affiliation with the consumer's current lender; [82] (4) the availability of government grants for home repairs; [83] (5) the savings available by refinancing; [84] (6) reverse mortgage terms and government affiliation; [85] (7) the availability of rates compared to competitors; [86] and (8) the advertiser's self-description as a ''bank.'' [87]

III. Discussion of the Rule

The Commission's law enforcement experience, state law enforcement activities, and the comments received in response to the ANPR and NPRM demonstrate that deceptive claims in mortgage advertising and marketing pose a risk of significant harm to consumers. The FTC believes that this Final Rule prohibiting misrepresentations in mortgage advertising will enable the agency to protect prospective borrowers by establishing clearer standards, increasing the efficiency of law enforcement, and deterring unlawful behavior. In particular, as noted above, the Commission and CFPB will be able to seek civil penalties for violations of the Final Rule, thereby enhancing the deterrent effect of law enforcement actions.[88] Civil penalties may be an especially useful deterrent in cases in which consumer redress or disgorgement is not available or not feasible. States also will be able to enforce the Rule and seek civil penalties, which will further help deter deception in mortgage advertising and marketing.

A. Section 321.1: Scope

Section 321.1 states that the Final Rule implements the mandate of the Omnibus Appropriations Act, as clarified by the Credit CARD Act.[89] These statutes direct the Commission to commence a rulemaking proceeding to issue rules that ''relate to unfair or deceptive acts or practices regarding mortgage loans''.[90] The Credit CARD Act limits the Commission's rulemaking authority to persons over whom the FTC has jurisdiction under the FTC Act, as discussed above.

B. Section 321.2: Definitions

1. Sections 321.2(e): ''Mortgage Credit Product;'' 321.2(c): ''Credit;'' 321.2(d): ''Dwelling;'' and 321.2(b): ''Consumer''

The Final Rule, like the proposed rule, prohibits any person from ''making any material misrepresentation * * * in any commercial communication, regarding any term of any mortgage credit product'' Section 321.2(e) of the Rule adopts the proposed rule's definition of ''mortgage credit product.'' To fall within that definition, the product must meet three criteria. First, it must be a form of ''credit.'' The term ''credit'' is defined in § 321.2(c) as ''the right to defer payment of debt or to incur debt and defer its payment.'' [91] Second, the credit must be secured by either real property or a dwelling.[92] The proposed rule defined ''dwellin'' as ''a

[73] *See, e.g., FTC* v. *Capital City Mortg. Corp.,* No. 1:98CV237 (D.D.C. 1998).

[74] *See, e.g., FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001). In addition, in making these statements, the lender allegedly did not reveal that the loans were interest-only and that borrowers would owe the entire principal amount in a large balloon payment at the end of the loan term.

[75] *See, e.g., In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000).

[76] *See, e.g., In re Lomas Mortg. U.S.A., Inc.,* 116 F.T.C. 1062 (1993).

[77] *See, e.g., FTC* v. *30 Minute Mortg. Inc.,* No. 03–60021 (S.D. Fla. 2003).

[78] *See, e.g., In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009).

[79] *See, e.g., United States* v. *Unicor Funding, Inc.,* No. SACV99–1228 (C.D. Cal. 1999).

[80] *See, e.g., In re Lenox Fin. Mortg., LLC,* No. 2007–017383 (Ariz. Sup. Ct. 2007) (assurance of discontinuance), *available at http://www.azag.gov/press_releases/sept/2007/LenoxFinancialAssurance&Approval.pdf.*

[81] *See, e.g., State* v. *Lifetime Fin., Inc.,* No. LC080829 (Cal. Super. Ct. 2008), *available at http://www.ag.ca.gov/cms_attachments/press/pdfs/n1533_complaint_for_civil_penalties.pdf; State* v. *Green River Mortg.,* No. 2009CV89 (Colo. Dist. Ct. 2009), press release *available at http://www.coloradoattorneygeneral.gov/press/news/2009/05/12/attorney_general_announces_settlement_barring_mortgage_broker_operating_inside; State* v. *One Source Mortg., Inc.,* No. 07CH34450 (Ill. Cir. Ct. 2007), press release *available at http://www.ag.state.il.us/pressroom/2007_11/20071126.html; In re Paramount Equity Mortg., Inc.,* No. C–07–405–08–SC01 (Wash. Dept of Fin. Inst. 2008), *available at http://www.dfi.wa.gov/CS%20Orders/C-07-405-08-SC01.pdf.*

[82] *See, e.g., State* v. *Sroka,* No. 2007–16–61 (Idaho Dept of Fin. 2007), *available at http://finance.idaho.gov/ConsumerFinance//Actions/Administrative/2007-16-61_Sroka_Terrazas_Order_Cease_and_/Desist.pdf; State* v. *Sage,* No. 2007–8–45 (Idaho Dept of Fin. 2007), press release *available at http://finance.idaho.gov/PR/2007/PressRel_Sage_CDOrder.pdf; State* v. *Goldstar Home Mortg.,* No. 09AB–CV02310 (Mo. Cir. Ct. 2009) press release *available at http://ago.mo.gov/newsreleases/2009/AG_Koster_files_lawsuits_after_mortgage_fraud/.*

[83] *See, e.g., State* v. *Ellis,* No. 07CH34451 (Ill. Cir. Ct. 2007), press release *available at http://www.ag.state.il.us/pressroom/2007_11/20071126.html.*

[84] *See, e.g., State* v. *Advantage Mortg. Serv., Inc.,* No. C107 (Neb. Dist. Ct. 2007), *available at http://www.ndbf.ne.gov/forms//Advantage_Mortgage_/Complaint.pdf.*

[85] *See, e.g., State* v. *Upstate Capital, Inc.,* No. 08–036 (N.Y. Office of Att'y Gen. 2008), press release *available at http://www.ag.ny.gov/media_center/2008/apr/apr24a_08.html.* Other cases have charged other entities with deceptive advertising, including using the words ''United States of America'' or an image of the Statute of Liberty, when the advertiser had no affiliation with the government (*see State* v. *Island Equity Mortg., Inc.,* (N.Y. Banking Dept 2007), *available at http://www.banking./state.ny.us//ea070412.htm*), and falsely representing that the advertisers were affiliated with a government program (*see In re Assurity Fin. Servs., LLC,* No. C–07–320–08–SC01 (Wash. Dept of Fin. Inst. 2008), *available at http://www.dfi.wa.gov/CS%20Orders/C-07-fxsp0;320-08-SC01.pdf*); *see also State* v. *Am. Advisors Group, Inc.,* No. 2010CH00158 (Ill. Cir. Ct. filed Feb. 8, 2010), *available at http://www.scribd.com/doc/33748621/People-Illinois-v-American-Advisors-Group-Complaint; State* v. *Hartland Mortg. Ctrs., Inc.,* No. 10CH05339 (Ill. Cir. Ct. filed Feb. 8, 2010), press release *available at http://www.ag.state.il.us/pressroom/2010_02/20100208.html*). HUD also has taken action against two lenders for deceptive advertising of HUD-insured reverse mortgages. *See* Press Release, HUD, *FHA Withdraws Three Lenders, Suspends a Fourth* (Feb. 25, 2010), *available at http://portal.hud.gov/portal/page/portal/HUD/press/press_releases_media_advisories/2010/HUDNo.10–019.*

[86] *See, e.g., In re Paramount Equity Mortg., Inc.,* No. C–07–405–08–SC01 (Wash. Dept of Fin. Inst. 2008), *available at http://www.dfi.wa.gov/CS%20Orders/C-07-405-08-SC01.pdf.*

[87] *See, e.g., id.*

[88] *See supra* Part I.A.4.

[89] Section 321.1 of the Final Rule merely simplifies the language that was used in this section of the proposed rule.

[90] *See* Omnibus Appropriations Act § 626(a); Credit CARD Act § 511(a)(1)(B).

[91] Final Rule § 321.2(c). This definition is largely based on that in Regulation Z. *See* 12 CFR 226.2(a)(14). One difference, however, is that the Final Rule covers all shared equity and shared appreciation mortgages offered to consumers, whereas certain types of such mortgages may not be considered ''credit'' under Regulation Z. *See* Regulation Z Commentary, 12 CFR 226.2(a)(14)–1 and 226.17(c)(1)–11, Supp. I. In shared equity and shared appreciation mortgages, the consumer receives cash, a lower interest rate, or other favorable terms in exchange for agreeing to share with the lender or other company all or part of the consumer's total equity or the appreciation in the consumer's equity when the loan comes due, or at some other point during the loan.

[92] Note that some aspects of the Regulation Z advertising rules apply to credit secured by a dwelling but not credit secured by real property. *See* 12 CFR 226.16(d); 12 CFR 226.24(f) and (i).

residential structure that contains one to four units, whether or not that structure is attached to real property'' and includes ''an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence''.[93] The Final Rule adds the term ''manufactured home'' to the definition to ensure that the Rule's protections extend to consumers whose homes are constructed at a site (*e.g.,* factory floor) other than the final location of the structure.[94] Third, the credit must be ''offered or extended to a consumer primarily for personal, family, or household purposes.'' ''Consumer'' is defined in § 321.2(b) as a ''natural person to whom a mortgage credit product is offered or extended''.[95] ''Personal, family, or household purposes'' includes, for example, home purchase or improvement loans, debt consolidation or home equity transactions, credit for medical or dental expenses, and educational loans. Credit offered or extended primarily for a business purpose would not be covered, even if a lien on a dwelling secures the loan. The determination of whether the credit is ''primarily'' for personal, family, or household use rather than ''primarily'' for business use requires an assessment of all of the facts of a particular transaction.

''Mortgage credit product'' is defined to include ''credit'' that is either closed-end (*e.g.,* installment financing)[96] or open-end (*e.g.,* HELOCs).[97] The term includes traditional, fully amortizing loans and nontraditional or alternative financing.[98] ''Mortgage credit product'' further includes both forward and reverse mortgages.[99] The Commission did not receive any comments on the above-defined terms or concepts.

2. Section 321.2(g): ''Term''

The Final Rule applies to commercial communications regarding any ''term'' of any mortgage credit product. It adopts, without change, the proposed rule's broad definition of ''term,'' which means ''any of the fees, costs, obligations, or characteristics of, or associated with, the product.'' The definition also ''includes any of the conditions on or related to the availability of the product.'' ''Term'' is intended to cover all aspects of a mortgage credit product without exception. The Commission did not receive any comments on this definition.

3. Section 321.2(a): ''Commercial Communication''

As discussed above, the Rule applies to claims made in any ''commercial communication.'' The definition of that term in the Final Rule, which includes only non-substantive modifications to the proposed rule's definition, provides that a ''commercial communication'' is:

> any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term ''commercial communication''.[100]

This definition encompasses commercial communications[101] in any medium and in any language.[102]

The Commission received a few comments relating to the proposed definition of ''commercial communication.''[103] One commenter suggested that the Rule provide a safe harbor or alternative disclosure mechanism for commercial communications delivered by radio.[104] The commenter expressed concern that any disclosures that may be required to comply with the Rule would require airtime in addition to that used for the advertisement itself.[105] The Commission declines to make this change because the Final Rule does not impose any affirmative disclosure requirements but rather prohibits misrepresentations.

Another commenter stated that the combination of the risk of liability and the recordkeeping requirements under the proposed rule would discourage real estate agents and brokers from providing general mortgage-related information to clients or prospective clients.[106] This commenter suggested revising the definition of ''commercial communication'' to address this issue, or in the alternative, narrowing the recordkeeping requirements and adding a ''good-faith exception''.[107] Specifically, the commenter stated that the definition of ''commercial communication'' is overbroad because it goes beyond mortgage advertising to encompass communications about any goods or services.[108] Thus, according to the commenter, the Commission should narrow the definition by replacing the phrase ''purchasing goods or services'' with ''obtaining a particular mortgage credit product''.[109] The Commission declines to revise the definition as suggested. The definition is not overbroad when viewed in the context of the Final Rule. The prohibition against misrepresentations in § 321.3 does not apply to all commercial communications; rather, it applies to any commercial communication ''regarding any term of any mortgage

[93] Final Rule § 321.2(d). Both primary and secondary (or vacation) homes are covered if they are used as collateral for the loan. The term ''dwelling'' is based on that used in TILA and Regulation Z. *See* 15 U.S.C. 1602(v) and 12 CFR 226.2(a)(19).

[94] The Final Rule also includes a non-substantive revision to the last sentence of the proposed definition. These changes conform the Rule's definition of ''dwelling'' more closely with the definition of the same term used in the Commission's MARS Rule. *See* 12 CFR 322.2(e).

[95] Final Rule § 321.2(b). Thus, credit offered or extended to an organization or governmental entity is not covered.

[96] Construction financing and other forms of credit in which multiple advances may be common are also covered. In these transactions, some or all of the advances may be estimates (as to their dollar amount or the date on which they will occur)

[97] The Rule applies the same standards to closed-end and open-end credit. In contrast, the Regulation Z advertising provisions (including restrictions on deceptive claims) are different for closed-end and open-end credit. *See, e.g.,* 12 CFR 226.24(i) and 12 CFR 226.16(d)(5) and (f).

[98] Covered alternative loans include, for example, hybrid ARMs, teaser rate or teaser payment loans with low rates or payments that expire after a short period, interest-only and balloon mortgages, negative amortization mortgages, shared equity and shared appreciation mortgages, buydowns, and payment option ARMs.

[99] *See supra* note 30 and accompanying text.

[100] Proposed § 321.2(a) used the term ''verbal'' where the Final Rule uses the term ''oral.'' The Final Rule also includes non-substantive revisions to the last sentence of the proposed definition. These changes conform the Rule's definition of ''commercial communication'' more closely with the definition of the same term used in the Commission's MARS Rule. *See* 16 CFR 322.2(c).

[101] Based on this definition, the Rule has broader applicability than the Board's advertising rules in Regulation Z, which specifically exempt personal contacts, communications about existing accounts, and certain educational materials. *See* Regulation Z Commentary, 12 CFR 226.2(a)(2), Supp. I.

[102] *See also infra* Part III.C.5.

[103] CMC/MBA at 5–6; HSA at 2–6; NRMLA at 4. The Commission notes that one commenter suggested a ''Good Housekeeping Seal of Approval'' concept for online mortgage calculators, generally commenting that the Federal Government should make certain HUD-certified mortgage evaluation technology widely available to consumers on Federal agency Web sites. CMC/MBA at 5–6. This commenter also requested that the Commission postpone this rulemaking and, instead, engage in a coordinated rulemaking with the CFPB. *Id.* at 1.

[104] NRMLA at 4.

[105] *Id.*

[106] HSA at 2–6.

[107] *See infra* Part III.E.2.

[108] HSA at 3.

[109] *Id.* at 5

credit product.'' [110] Thus, the Rule is appropriately limited to mortgage-related communications.

The commenter also suggested adding an exception at the end of the definition for certain informational or educational statements that real estate brokers and agents may make.[111] With respect to this suggestion, the Commission notes that a communication is not ''commercial'' unless it ''is designed to effect or create interest in purchasing goods or services.'' Thus, a statement that is purely informational and is not designed to effect or create interest in purchasing goods or services would not be covered by the Rule.[112] The Commission believes that the language in the definition of ''commercial communication,'' which also appears in the Commission's MARS Rule [113] and several advertising-related orders,[114] provides an appropriate dividing line between commercial and noncommercial communications.

4. Section 321.2(f): ''Person''

The Final Rule adopts the proposed rule's definition of ''person,'' which means ''any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity''.[115] Thus, any individual or entity that makes representations in a commercial communication about a mortgage credit product is a ''person'' for purposes of the Rule. The types of entities the Rule covers generally include mortgage lenders, mortgage brokers, mortgage servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others within the Commission's jurisdiction who engage in commercial communications concerning mortgage credit products.[116] As mandated by the Omnibus Appropriations Act, the Rule does not cover individuals and entities that are excluded from the FTC's jurisdiction.

The Commission received numerous comments regarding whom the Final Rule should cover. One commenter representing several groups of state financial institution regulators supported broad coverage without exemptions for any non-depository institutions beyond those that are exempt under the FTC Act. In particular, this commenter advocated for coverage of subsidiaries or affiliates of banks and thrifts.[117] Another commenter requested an exemption for advertising agencies, stating that the responsibility for compliance with the Rule should fall on the lenders, brokers, or agents promoting the products.[118] Another commenter similarly requested an exemption from the Rule for real estate agents and brokers, stating that they provide incidental or *de minimis* advice about mortgage lending simply to inform consumers of their options and not to market any particular mortgage credit product.[119] The commenter stated, however, that the Rule should apply to a real estate professional that is compensated as a loan originator or by a loan originator for this service.[120] Another commenter, raising concerns about the Rule's impact on real estate agents and brokers, requested other specific amendments to the Rule that would effectively exempt such persons from the Rule.[121]

The Commission declines to exempt advertising agencies or real estate professionals from the Final Rule. These types of individuals and entities, as well as others, can make direct or indirect misrepresentations to consumers about mortgage credit products, causing consumers harm.[122] Accordingly, the Final Rule must cover misrepresentations by each of these categories of persons to protect consumers from deception. In addition, the Commission notes that the Rule covers any person, including an advertising agency [123] or real estate professional, who makes representations to consumers about a mortgage credit product only to the same extent that the person would be covered and subject to liability under Section 5 of the FTC Act.

Most of the submitted comments advocating particular exemptions from the Rule were from or on behalf of state-chartered credit unions. Some of these commenters urged the Commission to exclude state-chartered credit unions because existing regulations already cover them [124] or because Federally-chartered credit unions would not be covered by the Rule.[125] Some commenters suggested, in the alternative, that the Commission include state-chartered credit unions under the Rule but ''deem'' them in compliance if, for example, they comply with other current and future mortgage regulations.[126]

Because of the importance of protecting consumers from deceptive mortgage advertising, regardless of the type of entity engaged in the deception, the Final Rule does not grant any exemptions for institutions within the FTC's jurisdiction under the FTC Act. Consistent with the FTC's jurisdiction, the Final Rule covers all credit unions except Federally-chartered credit unions.[127] The Rule simply prohibits

[110] To provide clarity and guidance, §§ 321.3(a)–(s) of the Final Rule set forth a non-exclusive list of such misrepresentations.

[111] HSA at 5. Specifically, the commenter suggested adding the following language: ''Informational or educational statements made by real estate brokers and agents in an effort to explain or illustrate concepts relating to mortgage credit products generally, and not designed to advertise a particular mortgage credit product, are not included in the phrase 'commercial communication.' '' *Id.*

[112] Note that commercial communications include promotional materials even if they are portrayed as educational in nature. For example, the term encompasses program-length commercials (''infomercials'') and other promotional items. *See* Final Rule § 321.2(a); *see also supra* note 101.

[113] *See* 12 CFR 322.2(c).

[114] *See, e.g., FTC* v. *Xacta 3000, Inc.,* No. 09–CV–0399 (D. N.J. 2010); *In re Novartis Corp.,* F.T.C. Dkt No. 9279 (1999).

[115] Final Rule § 321.2(f). This definition is based on that used in Regulation Z. *See* 12 CFR 226.2(a)(22).

[116] *See supra* notes 33–34 and accompanying text.

[117] CSBS/ACSSS/NACCA at 1.

[118] Gorbey at 1.

[119] NAR at 1–2.

[120] *Id.* at 2.

[121] *See generally* HSA; *see also supra* Part III.B.3 and *infra* Part III.E.2.

[122] For example, a company may make a representation indirectly to consumers by providing another with materials containing deceptive claims that the recipient, in turn, provides to consumers. The Commission has held companies that provide others with such deceptive ''means and instrumentalities'' liable under Section 5 of the FTC Act. *See, e.g., In re Castrol N. Am., Inc.,* 128 F.T.C. 689 (1999); *In re Shell Chem. Co.,* 128 F.T.C. 749 (1999); *Waltham Watch Co.* v. *FTC,* 318 F.2d 28, 32 (7th Cir. 1963) (''Those who put into the hands of others the means by which they may mislead the public, are themselves guilty of a violation of Section 5.* * *'').

[123] Under the FTC Act, an advertising agency is liable for the claims it made to consumers if it was ''an active participant in preparing the violative advertisements'' and ''must have known or had reason to know'' the advertisements were deceptive. *See, e.g., In re Bristol-Myers Co.,* 102 F.T.C. 21, 364 (1983). The Commission, for example, has brought cases alleging that advertising agencies violated Section 5 of the FTC Act by making deceptive representations of automobile lease or credit terms in advertisements. *See In re Bozell Worldwide, Inc.,* 127 F.T.C. 1 (1999); *In re Martin Adver., Inc.,* 127 F.T.C. 10 (1999); *In re Foote, Cone & Belding Adver., Inc.,* 125 F.T.C. 528 (1998); *In re Grey Adver., Inc.,* 125 F.T.C. 548 (1998); *In re Rubin Postaer and Assocs., Inc.,* 125 F.T.C. 572 (1998).

[124] *See* CUAO at 1; PCUA at 1; WCUL at 1; *see also* NASCUS at 1; CUNA at 1; OMNI at 1. Federally-insured credit unions are prohibited generally by NCUA's regulations from using advertising or promotional material that contains inaccurate, misleading, or deceptive claims concerning their products, services, or financial condition. *See* 12 CFR 740.2. Some commenters noted that the advertising practices of state-chartered credit unions that are Federally insured are subject to existing NCUA advertising regulations. *See* NASCUS at 2; CUNA at 2; *see generally* BECU.

[125] *See* BECU at 3; PCUA at 2.

[126] *See, e.g.,* CUAO at 1; WCUL at 1; CUNA at 1.

[127] The Commission's jurisdiction excludes Federally-chartered credit unions but includes all state-chartered credit unions and nonfederally-chartered credit unions in Puerto Rico and other U.S. territories (whether or not they have Federal insurance). *See* 15 U.S.C. 45(a)(2), 57a(f)(4); 12 U.S.C. 1766, 1786; *see also* FTC, Disclosures for Non-Federally Insured Depository Institutions

material misrepresentations and does not conflict with the regulations of other Federal agencies.[128] Nor does the Commission believe that prohibiting any person, including nonfederally-chartered credit unions, real estate professionals, advertising agencies, and others, from making deceptive claims would put them at a competitive disadvantage. Many entities not covered by the Final Rule are subject to general Federal and state truth-in-advertising laws, including state ''little FTC Acts'' that reflect the prohibition against unfair or deceptive acts or practices found in Section 5 of the FTC Act. Moreover, compliance with the Final Rule's recordkeeping obligations should not be overly burdensome, because it requires the retention of documents that many covered persons already retain in the ordinary course of business.[129]

C. Section 321.3: Prohibited Representations

1. Final Rule

The Final Rule adopts, without change, proposed § 321.3, which prohibits *any* material misrepresentation, whether made expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product.[130] The Commission concludes that this provision is necessary and appropriate to protect consumers from deceptive practices.

To provide clarity and guidance, §§ 321.3(a)–(s) also set forth a non-exclusive list of misrepresentations that would violate the Final Rule.[131] The list includes the most common misrepresentations that have been challenged in Federal and state enforcement actions over the past several years. The list is intended to provide illustrative guidance about the kinds of claims that are prohibited, thereby promoting compliance.

Section 321.3(a) covers misrepresentations about interest charged for the product, including, but not limited to, misrepresentations about (1) the amount of interest owed each month that is included in the consumer's payments, loan amount, or total amount due; or (2) the interest owed each month that is not included in the payments but is instead added to the total amount due.[132]

Section 321.3(b) bars misrepresentations about the APR, simple annual rate, periodic rate, or any other rate, including, but not limited to, a payment rate.[133] The Commission has challenged deceptive rate claims in many cases, some of which included allegations that originators understated the true rate by more than 100 percent.[134]

Section 321.3(c) bars misrepresentations about the existence, nature, or amount of fees or costs associated with any mortgage credit product. It also prohibits false or misleading claims that no fees are charged, for example, if the fees and costs in fact are incorporated in the loan amount or total amount due from the consumer.[135] This provision covers fees and costs imposed at any point during the life of the loan.

Section 321.3(d) covers misrepresentations about terms associated with additional products or features that may be sold in conjunction with a mortgage credit product.[136] Thus, this provision covers claims made in cross-selling other products or features in mortgage credit product offers, including, but not limited to, credit insurance, credit disability insurance, car clubs, or other ''add-ons'' to the loan.[137]

Section 321.3(e) covers misrepresentations relating to the taxes or insurance associated with a mortgage credit product, for example, claims about whether tax or insurance charges are included in the overall monthly payment or must be paid separately.[138]

Section 321.3(f) bars misrepresentations about the existence or amount of any penalty for making prepayments on the mortgage.[139]

Section 321.3(g) prohibits misrepresentations pertaining to the variability of interest, payments, or other terms of mortgage credit products, including, but not limited to, misrepresentations using the word ''fixed'' when terms are, in fact, variable or limited in duration.[140]

Under the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Final Rule, 75 FR 31682, 31683 (June 4, 2010); NCUA, Frequently Asked Questions, *http://www.ncua.gov/About/FAQ.aspx* (last visited Apr. 4, 2011); NASCUS, State Credit Union Facts & Figures, *http://www.nascus.org/facts-figures/index.php* (last visited Apr. 4, 2011).

[128] In other words, nothing in the other agencies' regulations would require entities to make deceptive claims that the Final Rule prohibits.

[129] *See infra* Part III.E.

[130] As noted above, a claim is deceptive under Section 5 of the FTC Act if there is a ''representation, omission, or practice that * * * is likely to mislead consumers acting reasonably under the circumstances, and * * * the representation, omission, or practice is material.'' *Cliffdale,* 103 F.T.C. at 165. Information is ''material'' if it is ''likely to affect [a consumer's] choice of, or conduct regarding, a product.'' *Id.; see also Novartis,* 223 F.3d. at 786; *supra* notes 45–50 and accompanying text. The types of information in the representations specified in § 321.3 of the Rule involve matters central to consumers' decisions about mortgage credit products. Thus, the types of misrepresentations the Rule prohibits are ''material.''

[131] In the NPRM, the Commission informally grouped the list of misrepresentations into three broad categories to facilitate discussion. Neither the SBP nor the Final Rule uses the three categories.

[132] In the NPRM, the Commission also addressed negative amortization products in connection with § 321.3(a). After further reflection, the Commission believes it is more appropriate to address this topic in connection with § 321.3(i). *See infra* note 144 and accompanying text.

[133] A payment rate is the rate used to calculate the consumer's monthly payment amount and is not necessarily the same as the interest rate. If the payment rate is less than the interest rate, the consumer's monthly payment amount does not include the full interest owed each month; the difference between the amount the consumer pays and the amount the consumer owes is added to the total amount due from the consumer.

The Rule prohibits misrepresentations about payment rates and any other rate, for both closed-end and open-end credit. In comparison, Regulation Z bans advertising of payment rates, effective rates, and qualifying rates for closed-end credit, *see* Regulation Z Commentary, 12 CFR 226.24(c)–2, Supp. I, but does not ban advertising of such rates for open-end credit.

[134] *See FTC* v. *Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (N.D. Ill. 2008) (severely understated APR); *see also In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009); *In re Shiva Venture Group, Inc.,* F.T.C. Dkt. No. C–4250 (2009); *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009).

In the NPRM, the Commission addressed savings rates in connection with § 321.3(b). After further reflection, the Commission believes it is more appropriate address this topic in connection with § 321.3(h). *See infra* notes 141–43 and accompanying text.

[135] *See, e.g., FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004); *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 GLT (ANx) (C.D. Cal. 2004) (allegedly promoting ''NO COSTS * * * NO KIDDING'' and ''no-fee'' loans, when in fact, the loans included such charges); *see also FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001); *FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000).

[136] The Commission has challenged such misrepresentations in its law enforcement actions. *See, e.g., FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001).

[137] The Commission has alleged deceptive practices involving add-ons to non-mortgage personal loans as well. *See FTC* v. *Stewart Fin. Co. Holdings,* Civ. No. 1:03–CV–2648–JTC (N.D. Ga. 2003).

[138] Commission enforcement actions have challenged deceptive claims that the advertised monthly payment included tax and insurance charges, when in fact it did not. *See, e.g., United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002); *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002); *FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001).

[139] The Commission has brought several cases against entities that allegedly deceived consumers about prepayment penalties. *See, e.g., United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002); *FTC* v. *OSI Fin. Servs.,* Inc., No. 02–C–5078 (N.D. Ill. 2002); *FTC* v. *Chase Fin. Funding Inc.,* No. SACV 04–549 GLT (ANx) (C.D. Cal. 2004); *see also* FTC Bureau of Consumer Protection, Bureau of Economics, and Office of Policy Planning, Comments before Board of Governors of Federal Reserve System on Truth in Lending 4 n.11 (Apr. 8, 2008), *available at http://www.ftc.gov/os/2008/04/V080008frb.pdf.*

[140] The Commission has charged mortgage brokers and other entities with falsely promising

Continued

Section 321.3(h) bars false or misleading comparisons between rates or payments,[141] including, but not limited to, comparisons involving savings. It also is intended to cover false or misleading savings rate claims in financing promotions. The Commission has challenged, for example, deceptive claims that consumers will save money (such as at a particular rate of savings) by accepting a credit offer.[142] This provision also bars false or misleading comparisons between rates or payments available for different parts of the loan term.[143]

Section 321.3(i) prohibits misrepresentations about the type of mortgage credit product being offered, *e.g.,* false claims that a mortgage is fully amortizing.[144]

Section 321.3(j) bars misrepresentations about the amount of the obligation or the existence, nature, or amount of cash or credit the consumer could receive from the loan.[145] This would include, for example, false claims that the consumer will receive a certain amount of cash by obtaining a home equity loan, or will receive a certain amount of credit through a purchase money loan.

Section 321.3(k) prohibits misrepresentations about the existence, number, amount, or timing of any minimum or required payments.[146] One commenter, focusing on reverse mortgages, suggested revising the Rule to clarify that it is not a violation of § 321.3(k) if the advertisement makes clear that the borrower has no regular monthly repayment installment obligations under the loan but must pay the real estate taxes and hazard insurance.[147] Although no revision of the Rule text is necessary on this point, the Commission emphasizes that the Final Rule does not prohibit a person from including in an advertisement truthful, non-misleading information about the borrower's responsibility to pay real estate taxes and hazard insurance. The Commission notes, however, that the determination of whether an advertisement is deceptive is based on the net impression of the advertisement as a whole. Thus, a fine print disclosure about the borrower's need to pay taxes and insurance often would not be sufficient to qualify a more prominent claim that the borrower need not make monthly payments.[148]

Section 321.3(*l*) prohibits misrepresentations about the potential for default on the mortgage credit product, including, but not limited to, misrepresentations about the circumstances under which the consumer could default for nonpayment of taxes or insurance, failure to maintain the property, or non-compliance with other obligations.[149]

Section 321.3(m) bars misrepresentations about the effectiveness of the mortgage credit product in helping consumers resolve problems in paying debts.[150] This section covers false or misleading claims that the lender's or servicer's product (through a waiver, forgiveness, or otherwise) can reduce, eliminate, or restructure a debt or any other obligation of any person.[151]

Section 321.3(n) prohibits misrepresentations about the association between a mortgage credit product or a provider of such product and any other person or program, including, but not limited to, any affiliation with an organizational or governmental program, benefit, or entity.[152]

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consumers low fixed payments and rates on their mortgage loans, including promising ''30 year fixed. 1.95%,'' ''3.5% fixed payment loan,''; and other rates that were not, in fact, fixed. *See, e.g., In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009); *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV 04–549 GLT (ANx) (C.D. Cal. 2004); *see also FTC* v. *30 Minute Mortg., Inc.,* No. 03–60021 (S.D. Fla. 2003); *Andrews* v. *Chevy Chase Bank,* 240 F.R.D. 612 (E.D. Wis. 2007) (describing payment option ARM sold as ''fixed rate'' when interest was only fixed for one month, although payments were fixed for a year).

Section 321.3(g) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit and requires specific advertising disclosures. *See* 12 CFR 226.24(i)(1).

[141] Section 321.3(h) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit and requires specific advertising disclosures. *See* 12 CFR 226.24(i)(2).

[142] The Commission has challenged deceptive savings rate claims in non-mortgage contexts. *See In re Automatic Data Processing, Inc.,* 115 F.T.C. 841 (1992) (alleged deceptive comparisons in automobile financing). Section 321.3(h) of the Final Rule would prohibit these types of promotions when used in the mortgage context. In the NPRM, the Commission addressed savings rates in connection with § 321.3(b).

[143] *See, e.g., In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000).

[144] The Commission has challenged such misrepresentations in its law enforcement actions. *See, e.g., In re Shiva Venture Group, Inc.,* F.T.C. Dkt. No. C–4250 (2009); *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009); *In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009); *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002); *United States* v. *Mercantile Mortg. Co.,* No. 02–C–5029 (N.D. Ill. 2002); *FTC* v. *Capital City Mortg. Corp.,* No. 1:98CV237 (D.D.C. 1998).

[145] *See FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001) (alleging deceptive representations about loan amounts in home equity mortgages); *FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000) (same); *see also United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002) (alleging deceptive representations about cash dispersal amounts in home equity loans or refinances); *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002) (same).

[146] This provision covers, for example: (1) Misrepresentations about whether certain payments are part of the loan, *see, e.g., FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002); *United States v. Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002); (2) false claims that an aspect of the loan would cover the payments due, *see FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004); and (3) false or misleading claims as to the obligation to repay, or make other payments associated with, a reverse mortgage, *see* Federal Financial Institutions Examination Council (FFIEC), *Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks* (*FFIEC Reverse Mortgage Guidance*), 75 FR 50801, 50809 (Aug. 17, 2010) (guidance issued by Federal and state bank regulatory agencies on need for adequate information and other consumer protections regarding reverse mortgage products). The Commission notes that reverse mortgages are also subject to other Federal requirements. *See, e.g.,* 24 CFR 206 (HUD regulations on HECMs). *See generally* 12 CFR 226 (Regulation Z).

[147] *See* NRMLA at 4.

[148] ''Fine print disclosures generally may not cure a misimpression created by the text of an advertisement.'' *In re Stouffer Foods Corp.,* 118 F.T.C. 746, 786 (citation omitted); *see also In re Am. Nationwide Mortg. Co.,* F.T.C. Docket No. C–4249 (2009); *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009).

[149] For example, it would violate this section for a reverse mortgage lender to make the false or misleading claim that ''no matter what, you can stay in your home for life,'' when the lender can force the sale of the property if the consumer does not adequately maintain the property.

[150] The Commission notes that the MARS Rule prohibits mortgage assistance relief service providers from: (1) Misrepresenting the amount of money or percentage of the debt amount that a consumer may save by using the mortgage assistance relief service; and (2) making a representation about the efficacy of any such service unless the provider can substantiate the representation. *See* 16 CFR 322.3(b)(10), (c). In contrast, the MAP—Advertising Final Rule prohibits any person from misrepresenting the effectiveness of the mortgage credit product in helping the consumer resolve problems paying debts. While the Final Rule is intended to address communications from lenders, servicers, and other advertisers primarily, it also is worded broadly enough to cover misrepresentations about mortgage credit products that may not be covered by the MARS Rule.

Section 321.3(m) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit. *See* 12 CFR 226.24(i)(5).

[151] Thus, this provision covers false or misleading claims of debt elimination, debt forgiveness, or savings associated with mortgage credit products. *See, e.g., In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000); *FTC v. Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (DC Ill. 2008).

[152] The FTC has challenged many of these types of claims in its loan modification cases, including where the defendants allegedly claimed, in part through the use of names, seals, or symbols, that the mortgage credit product was a government benefit or that the lender was affiliated with the government. *See, e.g., FTC* v. *Ryan,* No. 1:09–cv–00535–HHK (D.D.C. 2009). In some contexts, such misrepresentations may also violate the MARS Rule. *See* 16 CFR 322.3(b)(3). The MAP—Advertising Final Rule is worded broadly enough to cover misrepresentations about mortgage credit products that may not be covered by the MARS Rule.

Section 321.3(n) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit and is limited to claims about the loan program advertised. *See* 12 CFR 226.24(i)(3). In comparison,

One commenter suggested revising the Rule to clarify that § 321.3(n)(2) does not prohibit a person from advertising that it offers FHA-insured home equity conversion mortgages (HECM loans) if the person, in fact, does so.[153] While no revision of the Rule text is warranted on this point, the Commission notes that the Final Rule does not prohibit advertisers from making truthful, non-misleading claims as to the products they offer, including HECMs.

The same commenter also suggested making clear that the Rule permits advertisers to use symbols or logos that resemble those of a government entity, organization, or program, when their use is required or allowed, such as the Equal Housing lender logo.[154] The Final Rule generally permits the use of symbols and logos when required or allowed by the government.[155] Nevertheless, an advertisement including such a symbol or logo may be misleading, depending on the circumstances. For example, if an Internet advertisement, which is accessible by consumers located in any state, included such logos, but the advertiser had recently lost certain of its state licenses or certifications to offer mortgages in those jurisdictions, the advertisement could be deceptive and violate the Rule. Thus, the Commission agrees that the Rule permits the use of such symbols or logos in a truthful, non-misleading manner, but it does not believe that it is necessary to revise the language of the Rule to address the commenter's concern.

Section 321.3(o) covers misrepresentations about the source of the mortgage credit product and the commercial communications for it, including, but not limited to, claims that the communication is made by or on behalf of the consumer's current mortgage lender or servicer.[156]

Section 321.3(p) prohibits misrepresentations about the consumer's right to reside in the dwelling that is the subject of the mortgage credit product, including, but not limited to, false or misleading claims about how long or under what conditions a consumer can stay in the dwelling.[157] One commenter, focusing on reverse mortgages, suggested revising the Rule to clarify that it is not a violation of § 321.3(p) if the advertisement makes clear that the borrower must maintain the collateral property, satisfy any occupancy requirements, and timely pay the real estate taxes and hazard insurance, if such are required and applicable under the loan agreement.[158] While no revision of the Rule text is necessary on this point, the Commission emphasizes that the Final Rule does not prohibit a person from including in an advertisement truthful, non-misleading information about the obligations the borrower must meet to stay in the dwelling.

Sections 321.3(q) and 321.3(r) bar misrepresentations about the consumer's ability or likelihood to obtain any mortgage credit product or term, or a refinancing or modification of any mortgage credit product or term. This includes false or misleading claims about whether the consumer has been preapproved or guaranteed for any such product or term.[159]

Section 321.3(s) bars misrepresentations about the availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including, but not limited to, the qualifications of those offering the services or advice.[160] One commenter suggested clarifying whether, with respect to reverse mortgages, § 321.3(s) applies primarily to counselors and counseling agencies, or also applies to lenders and loan originators.[161] Because § 321.3(s) in the Final Rule applies to any ''person,'' as defined in § 321.2(f), it applies to all of these types of individuals or entities. The same commenter also suggested clarifying that advertisements may include valid professional designations, such as a Better Business Bureau indication or reference to status as a Certified Reverse Mortgage Professional for a loan originator.[162] The Final Rule does not prohibit truthful, non-deceptive references to valid professional designations.[163]

2. Advertising Disclosures

The proposed rule did not include any affirmative advertising disclosure requirements, and the Final Rule does not adopt any such requirements for the reasons discussed further below. In the NPRM, the Commission tentatively concluded that it was unnecessary to mandate advertising disclosures. The Commission also tentatively concluded that not doing so would avoid possible inconsistencies with other Federally- or state-mandated disclosure requirements for mortgage advertising, thereby lowering the likelihood of consumer confusion while making compliance easier. Nevertheless, the NPRM specifically requested comment on whether there are any disclosure

the Commission's Rule applies to both closed-end and open-end credit secured either by real property or a dwelling, covers claims about the loan program as well as the provider of the advertisement, and expressly references use of symbolic representations.

[153] *See* NRMLA at 4.

[154] *See id.* For example, HUD regulations implementing the Fair Housing Act, 42 U.S.C. 3601–3631, generally require the Equal Housing Opportunity logo on fair housing posters. *See* 24 CFR 110.

[155] *See, e.g.,* 42 U.S.C. 3605; 24 CFR 110.

[156] *See, e.g., In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009) (alleging the failure to disclosure adequately that the advertiser, not the consumer's current lender, was offering the mortgage). This section also covers false or misleading ''trigger lead'' solicitations, in which entities: (1) Obtain information about the consumer from sources such as prescreened lists sold by consumer reporting agencies; (2) based on that information, contact the consumer to promote a mortgage credit product or term; and (3) misrepresent their identity as the consumer's current lender or servicer.

Section 321.3(o) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit and is limited to representations about lenders. *See* 12 CFR 226.24(i)(4). In comparison, the Commission's Rule applies to both closed-end and open-end credit secured either by real property or a dwelling and bars misrepresentations about both servicers and lenders.

[157] Issues concerning the consumer's right to reside in the dwelling have frequently arisen in the sale of reverse mortgages. *See generally* U.S. Gov't Accountability Office (GAO), GAO–09–606, *Reverse Mortgages: Product Complexity and Consumer Protection Issues Underscore Need for Improved Controls over Counseling for Borrowers* (2009) (*GAO Reverse Mortgage Report*).

[158] NRMLA at 4.

[159] The Commission has challenged similar claims in prior law enforcement actions. *See, e.g., United States* v. *Unicor Funding, Inc.,* No. 99–1228 (C.D. Cal. 1999); *In re Lomas Mortg. U.S.A., Inc.,* 116 F.T.C. 1062 (1993); *FTC* v. *Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (DC Ill. 2008); *FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 JTC (N.D. Ga. 2001).

[160] Such misrepresentations have been identified as problematic in the offering of reverse mortgages, *see, e.g., FFIEC Reverse Mortgage Guidance, supra* note 146, and *GAO Reverse Mortgage Report, supra* note 157, and of loan modifications, *see generally* MARS, Final Rule, 75 FR 75092. In some contexts, such misrepresentations may also violate the MARS Rule. *See* 16 CFR 322.3(b)(1). The MAP—Advertising Final Rule is worded broadly enough to cover misrepresentations about mortgage credit products that may not be covered by the MARS Rule.

Section 321.3(s) of the Final Rule is broader than a similar provision in Regulation Z that applies only to closed-end dwelling-secured credit and addresses advertisements that use the term ''counselor'' to refer to a for-profit mortgage broker or creditor, its employees, or others working for the broker or creditor in offering, originating, or selling mortgages. *See* 12 CFR 226.24(i)(6). In comparison, the Commission's Rule applies to both closed-end and open-end credit secured either by real property or a dwelling and bans misrepresentations regardless of the type of for-profit entity involved.

[161] NRMLA at 4.

[162] *Id.*

[163] A literally true claim about a professional designation could nonetheless be misleading. For example, if an advertisement included a reference to ''Better Business Bureau approval,'' when certain Better Business Bureau offices approved the lender but others had issued a cautionary rating, this advertisement could be deceptive and violate the Rule.

requirements that the Commission should include in the Final Rule. The Commission received several comments addressing this issue—some discussing disclosures generally and others recommending specific disclosure requirements.

a. Comments Discussing Disclosures Generally

A comment from a group of state banking and consumer credit regulators generally recommended against requiring disclosures because other Federal rules require specific advertising disclosures and imposing additional requirements could create inconsistencies and confusion.[164] This commenter suggested, however, that the Rule should prohibit advertising that obscures significant risks to the consumer. The commenter stated that advertisements promoting a particular mortgage product or feature should give clear and prominent information alerting consumers to any potentially negative aspects of the loan, such as negative amortization.[165] To achieve this result, the commenter suggested that the Rule require mortgage advertisements to disclose any qualifying information, the omission of which would likely mislead reasonable consumers in a material way.[166] The Commission declines to adopt any affirmative disclosure requirements in the Final Rule but notes that § 321.3 broadly prohibits misrepresentations about any term of any mortgage credit product and that the omission of qualifying information may cause a representation to be misleading in violation of § 321.3.[167]

In addition, as noted in the NPRM and in several comments the Commission received, there are already substantial Federal and state regulations applicable to mortgage advertisements, including those that mandate disclosures. Mandating advertising disclosures in this Rule would create potential conflicts and inconsistencies with the disclosure provisions of the other requirements to which covered entities are also subject, particularly TILA and Regulation Z. For example, under TILA and Regulation Z, the APR must be calculated following certain methods, and it must be disclosed in mortgage advertisements in some circumstances.[168] If the Commission were to require a disclosure of the APR, it would either duplicate the TILA requirements or, if the APR was calculated using different costs and procedures than those established by TILA and Regulation Z, would result in inconsistent Federal requirements and inconsistent disclosures, leading to potential consumer confusion and increased burden on business. Similarly, if the Commission were to require a specific disclosure in all mortgage advertisements that state a monthly payment amount, this disclosure would either duplicate or potentially conflict with numerous other requirements under Regulation Z.[169]

Thus, the Commission has determined not to require any affirmative advertising disclosure requirements in the Final Rule. It concludes that the Final Rule's prohibitions on misrepresentations in commercial communications regarding mortgage credit products will provide sufficient protection to consumers. Finally, the Commission is cognizant of the important interplay between existing Federal and state advertising and disclosure requirements and designed the Rule to avoid conflict or inconsistency with those other requirements.

b. Comments Recommending Specific Disclosures

One commenter suggested requiring that any commercial communication about a reverse mortgage loan state that it relates to a reverse mortgage loan.[170] The commenter indicated that this would allow consumers at the outset to identify the product being marketed as a reverse mortgage, which, the commenter stated, is important because reverse mortgages are a unique subset of mortgage credit products.[171] As noted above, the Commission generally declines to adopt any affirmative disclosure requirements in the Final Rule to avoid conflict and inconsistency with other Federal and state disclosure requirements. Moreover, depending on the circumstances, if advertisements offering reverse mortgages misrepresent that they are offering another type of mortgage, or if advertisements offering other mortgage products misrepresent that they are offering reverse mortgages, such false or misleading claims would violate § 321.3(i).

The same commenter also recommended requiring that any commercial communication offering a reverse mortgage loan state whether the entity making the communication is the lender for the loan, and if not, state the role of the entity and its purpose in collecting information about the prospective borrower.[172] An individual commenter similarly suggested that the Commission require mortgage companies to disclose in their advertising the name and state under which they are licensed.[173] Another commenter proposed requiring mortgage brokers to disclose they are not mortgage lenders and do not fund loans.[174] As noted above, the Commission generally declines to adopt any affirmative disclosure requirements in the Final Rule to avoid conflict and inconsistency with other Federal and

[164] *See* CSBS/ACSS/NACCA at 1.

[165] *See id.*

[166] *See id.*

[167] Under Section 5 of the FTC Act, it is a deceptive practice to omit qualifying information when making a literally truthful claim if the omission of that information is likely to mislead reasonable consumers in a material way. *See* Deception Policy Statement, *supra* note 9, at 176–77. For example, a closed-end mortgage advertisement likely would be deceptive if it represented that a loan has a very low interest rate, but failed to disclose that the rate would substantially increase after a few months. Such claims often are referred to as ''half truths.'' Mortgage advertisements that include half truths in most cases also would be considered to have made implied misrepresentations that would fit into the specific categories of misrepresentations in the Rule. Continuing with the above example, a claim that a loan has a very low interest rate, in the absence of any qualifying information, is likely to imply to reasonable consumers that the rate lasts at least for longer than a few months. Thus, the Final Rule's prohibition on misrepresentations likely will cover the sorts of half truths that can arise when mortgage advertisers fail to make material disclosures.

[168] *See, e.g.,*12 CFR 226.4; 226.14; 226.16(b) and (d)(1), (2) and (6); 226.22; and 226.24(d) and (f)(2).

[169] For example, it is not clear that requiring disclosure of suggested ''take-home income'' applicable to an advertised mortgage credit product would be consistent with other Regulation Z requirements. *See infra* notes 175–76 and accompanying text; *see also, e.g.,* 12 CFR 226.24(f)(3) (requiring various disclosures with equal prominence and in close proximity, in certain mortgage advertisements, when a monthly payment amount is stated); 12 CFR 226.24(a) (providing that an advertisement for credit must state only those terms that actually are or will be arranged or offered).

[170] *See* NRMLA at 3.

[171] *Id.*

[172] *Id.*

[173] *See* Coe at 1. The Commission notes that some states restrict companies from disseminating mortgage advertisements unless they have, and display, such license information. *See* Kan. Stat. Ann. 9–2208 (2010); Or. Admin. R. 441–870–0080 (2010); 7 Pa. Cons. Stat. 6121, 6135 (2010); 10 Va. Admin. Code 5–160–60 (2010); *see also supra* note 56 (SAFE Act requirements). The Commission also notes that lenders and mortgagees approved by the FHA must use their HUD-registered business names in all advertisements and promotional materials related to FHA programs. *See supra* note 53.

[174] *See* CSBS/ACSS/NACCA at 2. This commenter also indicated that while various states require this information to be provided after application, few rules exist requiring brokers to make this distinction in advertising. *Id.* The Commission notes that some states require disclosures in advertisements (or provide that it is deceptive not to include certain information) indicating that the entity is a mortgage broker only and not a mortgage lender or that it does not make or fund loans. *See* Conn. Gen. Stat. 36a–497 (2010); N.J. Admin. Code 3:2–1.4 (2010); N.Y. Banking Law 595–a; N.Y. Comp. Codes R. & Regs. tit. 3, 38.2 (2010); 209 Mass. Code Regs. 42.12A (2010).

state disclosure requirements. Nonetheless, it is a violation of §§ 321.3(n) or (o) if the advertisement misrepresents, respectively: (1) The association of the mortgage credit product or any provider of the product with any other person of program, or (2) the source of any commercial communication, such as whether it is made by on behalf of the consumer's current lender or servicer.

One individual commenter expressed concern that advertisements quoting a monthly payment amount do not offer guidance on how much a household should earn to afford that payment.[175] The commenter proposed requiring that any home loan advertisement quoting a ''monthly price'' (presumably, a monthly payment amount) also must include a suggested ''take home income'' (after tax) needed for the consumer to afford that ''monthly price,'' to clarify to the consumer the connection between ''how much it will cost'' and ''how much I can spend.''[176] Again, the Commission generally declines to adopt any affirmative disclosure requirements in the Final Rule to avoid conflict and inconsistency with other Federal and state disclosure requirements. Nonetheless, § 321.3 broadly prohibits misrepresentations about any term of any mortgage credit product, which would include misrepresentations about monthly payment amounts and other costs to the consumer.

3. Dodd-Frank Act and CFPB Considerations

As noted above, the Dodd-Frank Act made substantial changes in the Federal regulatory framework for providers of financial products or services, including transferring to the CFPB, on the transfer date designated as July 21, 2011, the Commission's rulemaking authority under the Omnibus Appropriations Act, as clarified by the Credit CARD Act.[177] The Commission received two comments that focus primarily on the Dodd-Frank Act and suggest that the Commission defer issuing a final rule in view of the upcoming transfer of rulemaking authority.[178] These commenters suggested that the Federal banking agencies and the FTC should coordinate with the CFPB to implement one set of mortgage rules, or that these entities should engage in a coordinated review of regulatory initiatives and reevaluation of the goals and methods of financial regulation.[179] According to the commenters, the fact that the CFPB does not assume rulemaking authority under the Omnibus Appropriations Act until the designated transfer date is merely a technicality.[180] Another commenter representing a group of state-chartered credit unions suggested that the Commission issue a final rule but coordinate with the CFPB and defer mandatory compliance with the FTC's Final Rule until Titles X and XIV of the Dodd-Frank Act take effect.[181]

The Commission declines to adopt any of these recommendations. The Dodd-Frank Act did not remove or revise the Commission's rulemaking authority prior to the July 21, 2011 transfer date, and the Commission concludes that it is in the public interest to implement this Rule now.[182] The Final Rule essentially codifies existing deception law under Section 5 of the FTC Act, and thus does not pose a significant additional burden on covered entities. At the same time, the Final Rule will enhance consumer protection and deter deception because the Commission, the CFPB, and the states will be able to enforce it and obtain civil penalties for violations.[183] The Commission will continue its coordination with the CFPB on mortgage-related issues to avoid the imposition of inconsistent standards.

4. Substantial Assistance or Support

The proposed rule did not include a ''substantial assistance'' provision. Some FTC rules prohibit a person from giving substantial assistance or support to others who violate the rule if that person knows or consciously avoids knowing of the violations. In the NPRM, the Commission asked what evidence exists of individuals or entities knowingly providing substantial assistance to those engaged in deceptive mortgage advertising and whether the Final Rule should specifically prohibit this conduct.

The Commission received two comments opposing a substantial assistance provision.[184] One of the commenters stated that the prohibition may create a disincentive for real estate professionals to provide advice and unintentionally result in consumers having less access to information.[185] The other commenter suggested that, if the FTC did include such a prohibition, it should not hold lenders liable for violations committed by third parties, such as lead generators or brokers, that provided the substantial assistance or support.[186]

The Commission received one comment supporting the inclusion in the Final Rule of a substantial assistance or support provision.[187] The commenter stated that this prohibition would prevent mortgage loan originators from evading the Rule by contracting their advertising to third parties.[188] Another commenter generally stated that the Rule should cover third parties on whom companies rely for ''guidance'' regarding whether representations are prohibited by the Rule.[189]

The Commission declines to add a substantial assistance provision to the Rule. Neither the Commission's law enforcement experience nor the public comments received indicate that the provision of knowing substantial assistance to those engaged in deceptive mortgage advertising is prevalent or poses significant risks to consumers. More specifically, the record does not identify any classes of persons that may provide substantial assistance or support to mortgage advertisers that would not already be subject to the Rule. To the extent that there are others who provide such assistance and support and are not covered by the Rule, they may be liable under Section 5 of the FTC Act,[190] or the CFPB could

[175] Swider at 1.

[176] *See id.* This commenter suggested that the required disclosure should be calculated by multiplying the advertised monthly payment by five. Thus, if the advertised monthly payment were $500, this would trigger disclosure of a ''suggested take home income'' (after tax) of $2,500. As indicated above, such a disclosure could conflict with Federal or other requirements. *See supra* note 169.

[177] *See supra* Part I.A.4. The FTC retains enforcement authority for these rules concurrently with the CFPB. *See* Dodd-Frank Act §§ 1024, 1061.

[178] *See generally* ABA and CMC/MBA.

[179] *See* ABA at 1–2; CMC/MBA at 1. The commenters reference various provisions of the Dodd-Frank Act, including the requirement that the CFPB and FTC negotiate an agreement to facilitate coordination on rulemaking. *See, e.g.,* CMC/MBA at 3; *see also* Dodd-Frank Act § 1061(b)(5)(D); *see* ABA at 2–3; *see also* Dodd-Frank Act § 1097.

[180] *See* ABA at 3; CMC/MBA at 4.

[181] *See* PCUA at 1–2.

[182] Indeed, after the enactment of the Dodd-Frank Act, the Commission issued another final rule consistent with the directive under the Omnibus Appropriations Act. *See supra* note 7.

[183] *See supra* Parts I.A.3 and I.A.4.

[184] AFSA at 2; NAR at 2. Neither comment specifically addressed the ''knows or consciously avoids knowing'' standard.

[185] NAR at 2.

[186] AFSA at 2.

[187] CSBS/ACSSS/NAACA at 1. This comment did not specifically address the ''knows or consciously avoids knowing'' standard.

[188] *Id.* The Commission notes that the Rule covers any person who ''make[s]'' a material misrepresentation in a commercial communication about any term of a mortgage credit product. Whether or not a lender or a third party is considered to have ''made'' the misrepresentation for purposes of the Rule, however, depends on the circumstances. *See supra* Part III.B.4.

[189] OMNI at 1.

[190] For example, assume that a mortgage lender runs deceptive advertisements in violation of the Rule and submits the resulting charges through a payment processor who knows or should know of

Continued

amend the Rule to bring them within its scope.

5. Multiple Languages

The proposed rule broadly prohibited material misrepresentations in commercial communications regardless of the language or languages through which the claim is made.[191] In the NPRM, the Commission sought comment on several questions regarding the use of commercial communications that ''mix languages'' in connection with mortgage products, including whether such practices are unfair or deceptive, whether they are prevalent, and whether the Final Rule should address this conduct by adding disclosure requirements.

The Commission received several comments on this issue, most of which indicated that the Commission should not address multiple language issues in the Final Rule, beyond the general prohibition on misrepresentations in any language or combination of languages.[192] One commenter stated that no additional protections are needed and that ''only English should be used to keep costs down for institutions.'' [193] Another commenter noted that the multiple languages issue relates to mortgage loan disclosures in general and recommended that the Commission coordinate with the CFPB to ensure a consistent approach.[194] Specifically, to the extent that regulations may require disclosures in languages other than English, the commenter recommended that regulators provide model disclosure forms.[195]

Two commenters noted the benefits to consumers of advertising and communicating in languages other than English and were concerned about the disincentives that would result from requiring disclosures in those languages.[196] These commenters emphasized that the proposed rule already covers bait and switch tactics (*i.e.,* making claims about a product in an advertisement to encourage expression of consumer interest but then substituting a different product for the advertised product) and misrepresentations, regardless of the language used.[197] These commenters opposed requiring disclosures in the consumer's preferred language, stating that the costs to business of maintaining all of the various disclosures and contracts in all of the different languages that consumers potentially use would outweigh the benefits to consumers, and would cause companies not to advertise in languages other than English to avoid the burdens of the Rule.[198] According to one of the two commenters, lenders likely would not advertise in any languages other than English to avoid the risk of liability under state unfair trade practices statutes.[199] The commenter indicated that providing any required contracts in a language other than English would falsely raise consumers' expectations that they will be provided support in that language throughout the rest of their relationship with the lender.[200] The other commenter questioned whether transaction documents that states require to be publicly filed would be legally permitted in various county recorders' offices if they were in languages other than English.[201]

In contrast, one commenter stated that a company that advertises in a language other than English should provide disclosure and other mortgage documents, including the loan contract, in that other language as well as in English.[202] Another commenter described seeing several instances where borrowers with limited English proficiency were told one thing in their native language, but the written contract said something else.[203] This commenter requested that the Commission ''make it clear that anything that is deceptive when either or both languages or a 'mix' of languages is considered should be prohibited by rule.'' [204]

As noted above, the Final Rule prohibits misleading claims in any language or any combination of languages.[205] The Commission believes that, based on the record, it is not necessary to add a specific provision requiring disclosures in languages other than English, or to add other such related requirements to the Final Rule. For example, the Final Rule already addresses the concern that arises where a mortgage advertiser represents a key feature in a print advertisement in a language other than English but makes an inconsistent representation elsewhere in the advertisement in English. Such an advertisement could be deceptive and thus prohibited by the Final Rule. It is also well-established that the ''net impression'' to the consumer is a touchstone of FTC deception analysis, and that, consequently, a fine print or otherwise ineffective disclaimer may not cure an otherwise misleading advertisement.[206] This principle, as applied to advertising that uses multiple languages, means that, in advertising targeting consumers in a language other than English, a disclaimer in English may not cure misleading claims in that other language.[207]

the lender's Rule violations. Having not incorporated a ''substantial assistance or support'' provision into the Rule, the Commission could not challenge the payment processor's conduct as a Rule violation. However, depending on the facts and circumstances, the Commission might be able to take law enforcement action against the payment processor's conduct as an unfair act or practice in violation of Section 5 of the FTC Act. *See, e.g., FTC* v. *Your Money Access, LLC,* No. 2:07–5147 (E.D. Pa. 2007).

[191] The Commission has taken law enforcement action against those who have used a language other than English or multiple languages in deceiving consumers. These include actions against mortgage companies that allegedly deceptively offered loans to consumers whose primary language was a language other than English. One action challenged as deceptive a mortgage company's alleged practice of stating loan terms orally to Spanish-speaking consumers in Spanish, only to provide loan documents with different and less favorable terms in English. *See FTC* v. *Mortgages Para Hispanos.com Corp.,* No. 4:06-cv19 (E.D. Tex. 2006). In another case, the company allegedly offered certain mortgage terms in both Chinese and English advertisements, but failed to disclose a large balloon payment. *See In re Felson Builders, Inc.,* 119 F.T.C. 652 (1995).

[192] *See* AFSA at 2–3; HPC at 1–3; CMC/MBA at 6; OMNI at 2. Commenters acknowledged that the proposed rule already prohibited misleading claims in any language or combination of languages.

[193] OMNI at 2.

[194] CMC/MBA at 6.

[195] *Id.*

[196] AFSA at 2–3; HPC at 2.

[197] AFSA at 2; HPC at 2–3 (''Whether that misrepresentation is found in the foreign language, whether it is found in the English language or whether it is found in the mingling of the two languages is irrelevant; it is the misrepresentation that is significant and that is prohibited . * * *'').

[198] AFSA at 2–3; HPC at 2.

[199] AFSA at 2.

[200] *Id.*

[201] HPC at 2.

[202] CSBS/ACSSS/NACCA at 2.

[203] ABLE at 6.

[204] *Id.*

[205] *See* Final Rule § 321.2(a). In comparison, for closed-end credit, Regulation Z specifically bans providing information about some trigger terms or required disclosures only in a foreign language in the advertisement but, at the same time, providing information about other trigger terms or required disclosures only in English in that advertisement. *See* 12 CFR 226.24(i)(7).

[206] *See, e.g., FTC* v. *Cyberspace.com, LLC,* 453 F.3d 1196, 1200 (9th Cir. 2006).

[207] *See, e.g.,* 16 CFR 14.9 (under FTC rules, cease-and-desist orders, and guides that require ''clear and conspicuous'' disclosure of information, such disclosures must be made in the language of the target audience); 16 CFR 610.4(a)(3)(ii) (in marketing free credit reports, mandatory disclosures must be made in the same language as that principally used in the advertisement); 16 CFR 429.1(a) (in door-to-door sales, failure to furnish a completed receipt or contract in the same language as the oral sales presentation is an unfair and deceptive act or practice); 16 CFR 455.5 (where used car sales are conducted in Spanish, mandatory disclosures must be made in Spanish); 16 CFR 308.3(a)(1) (mandatory disclosures about pay-per-call services must be made in the same language as that principally used in the advertisement); *see also* FTC, Free Annual File Disclosures, Final Rule, 75 FR 9726, 9733 (Mar. 3, 2010) (noting ''the Commission's belief that a disclosure in a language different from that which is principally used in an advertisement would be deceptive'').

The Rule generally focuses on misrepresentations, regardless of the language or languages used, rather than requiring affirmative mortgage advertising disclosures or regulating mortgage-related transaction documents. In addition, Congress recently directed the CFPB to develop streamlined mortgage disclosures,[208] and the CFPB may be better situated to address non-English language disclosure issues in a more comprehensive fashion.

D. Section 321.4: Waiver Not Permitted

Section 321.4 of the Final Rule, which includes only non-substantive modifications to the proposed rule, provides that ''[i]t is a violation of this rule for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this rule.'' [209] The Commission received one comment strongly supporting this prohibition, stating that ''[t]here is never a justification for waivers of misrepresentations.'' [210] The Commission did not receive any other comments addressing this provision. The Commission therefore confirms that a non-waiver provision is necessary to protect consumers from being deceived in making decisions about the most important financial product most of them will obtain in their lifetimes. The Commission is unaware of any circumstances under which it should condone material misrepresentations by allowing advertisers of mortgage loans to include purported waivers in their contracts or other agreements with consumers.[211]

E. Section 321.5: Recordkeeping Requirements

1. Final Recordkeeping Requirements

Section 321.5 of the proposed rule set forth specific categories of records that persons covered by the proposed rule would be required to retain. A failure to keep such records would be an independent violation of the rule.[212]

The Final Rule's recordkeeping provision is the same as the proposed rule's provision except for minor clarifying changes.[213] Specifically, for a period of 24 months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, covered persons must retain the following information:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; [214]

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

The Rule permits entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business.

2. Comments Received

The Commission received several comments addressing different aspects of the proposed recordkeeping requirements. Two commenters supported the 24-month record retention period.[215] Another commenter representing several groups of state financial institution regulators suggested that the Commission impose a three to four year requirement, stating that many states require that timeframe and that a longer period is more appropriate for ''such important records.'' [216] The Final Rule retains the 24-month record retention period because it requires mortgage advertisers to retain sufficient documentation for efficient and effective compliance monitoring, while avoiding the imposition of unnecessary costs on advertisers.

One commenter stated that the recordkeeping provision describes the required categories of records adequately, but expressed concern that the proposed rule did not clarify whether the required records must be saved as hard copies or electronically. This commenter asserted that retaining records electronically would save money and storage space.[217] Section 321.5(b) of the Final Rule adopts the language in the proposed rule permitting entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. This language permits electronic or hard copies.

One commenter suggested that brokers who advertise rates and terms of loans purportedly offered by lenders should retain evidence that the rates and terms actually were being offered by specific lenders at the time of the advertisement.[218] Section 321.5(a)(2) of the Final Rule, which is unchanged from the proposed rule, requires the retention of such documents.

Several commenters discussed the overall costs and burdens associated with recordkeeping requirements, particularly with respect to advertising agencies, real estate brokers, and real

[208] *See, e.g.,* Dodd-Frank Act, § 1100A; *see also* Press Release TG–864, Dep't of the Treasury, *Treasury Convenes Mortgage Disclosure Forum, Event Brings Together Stakeholders to Discuss Path Forward to Simplify Mortgages Disclosure Forms, Empower Consumers with Better, Easy-to-Understand Information* (Sept. 21, 2010), *available at http://www.treasury.gov/press-center/press-releases/Pages/tg864.aspx.*

[209] The modifications are designed to make this provision clearer and easier to understand. The changes also align this provision with the same provision used in the Commission's MARS Rule. *See* 16 CFR 322.8. The proposed provision stated that ''[a]ny attempt by any person to obtain a waiver from any consumer of any protection provided by or any right of the consumer under this rule constitutes a violation of this rule.'' MAP B—Advertising, NPRM, 75 FR at 60370.

[210] ABLE at 5.

[211] Other consumer protection laws and regulations include prohibitions on requiring consumers to waive their statutory rights. *See, e.g.,* 15 U.S.C. 1693*l* (Electronic Fund Transfer Act); 16 CFR 322.8 (MARS).

[212] Final Rule § 321.5(b); *see also* 16 CFR 322.9(d) (MARS); 16 CFR 310.5(b) (TSR).

[213] This provision is similar in many respects to the recordkeeping requirements set forth in the FTC's MARS Rule and Telemarketing Sales Rule (TSR), including the mandate to retain scripts, advertisements, and promotional materials. *See* 16 CFR 322.9 (MARS); 16 CFR 310.5 (TSR). The Telemarketing and Consumer Fraud and Abuse Prevention Act expressly authorized the Commission to impose recordkeeping requirements. 15 U.S.C. 6102(a)(3). Although the Omnibus Appropriations Act, as clarified by the Credit CARD Act, does not contain a specific provision on recordkeeping, the recordkeeping requirements here are reasonably related to the prevention of deception.

[214] The Final Rule omits the phrase ''websites and weblogs,'' because that language is included in the definition of ''commercial communication.'' *See* Final Rule § 321.2(a). This change is to provide clarity; no substantive change is intended.

[215] AFSA at 3; OMNI at 2.

[216] CSBS/ACSSS/NACCA at 2.

[217] OMNI at 2.

[218] CSBS/ACSSS/NACCA at 2.

estate agents.[219] One commenter advocated for an exemption from the Rule for advertising agencies,[220] stating that agencies create and place commercial communications for a wide variety of clients, making it burdensome to retain and keep track of all communications that the Rule covers.[221] Another commenter, requesting an exemption from the Rule for real estate brokers and agents,[222] stated that the recordkeeping requirement would be an ''onerous burden'' on such persons, because they would need to track weekly changes in mortgage rates even though they are not acting as or on behalf of loan originators.[223]

Another commenter stated that the combination of the risk of liability under § 321.3 for providing mortgage-related information that proves to be inaccurate and the recordkeeping requirements under § 321.5 would discourage real estate agents and brokers from providing general mortgage-related information to clients or prospective clients.[224] This commenter suggested revising the definition of ''commercial communication'' to address this issue[225] or, in the alternative, narrowing the recordkeeping requirements[226] and adding a safe harbor'' or ''good-faith exception'' from the rule for an ''unintentional inaccuracy.'' [227]

With respect to overall burden, the Commission believes that the record retention requirement is necessary to ensure that covered persons are complying with the requirements of the Final Rule.[228] Specifically, the requirement that covered persons retain copies of their commercial communications will enable the FTC to review those communications for any misrepresentations that violate the Rule and to bring law enforcement actions as appropriate. Covered persons may offer consumers many different mortgage credit products and may also offer or provide additional products or services with the mortgage credit products, making it difficult for enforcement agencies to evaluate the veracity of claims in advertising for those products absent a recordkeeping requirement.

The Commission recognizes that recordkeeping provisions impose compliance costs; however, many covered persons in the ordinary course of their business already retain the types of documents that the Final Rule requires be retained. As noted above, to further reduce burden, the Rule permits entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The Final Rule also limits the retention requirements to avoid imposing any unnecessary burden. For example, covered entities need retain only commercial communications that are ''materially different'' from each other.

In response to commenters' concerns about the scope of the recordkeeping requirements, the Commission's Final Rule adds clarifying language throughout § 321.5(a) that does not substantively change the provision. The Final Rule clarifies that the recordkeeping requirements, like the prohibition in § 321.3, do not apply to all commercial communications; rather, they apply to any commercial communication ''regarding any term of any mortgage credit product.'' It also clarifies that the requirements apply only to commercial communications that the covered person ''made or disseminated.'' The Commission declines to make additional changes to the recordkeeping requirements, and specifically requires that records be retained by mortgage lenders and brokers, real estate brokers and agents, advertising agencies, and others that make representations about mortgage credit product terms in commercial communications. As noted above, the Rule is intended to be broad enough to cover commercial communications about mortgage credit products that are not necessarily offered or extended by the person who is making or disseminating the commercial communication.

Similarly, the Commission has determined not to narrow the recordkeeping requirement by providing a good faith exception for unintentional deceptive claims.[229] As explained above, the Final Rule generally requires retention of only a narrow class of records that, for the most part, advertisers are likely to keep in the ordinary course of business. In addition, an exemption for unintentional deception is contrary to the longstanding principle that a claim can be deceptive even though it was not the advertiser's intent to deceive.[230] Finally, the challenges of proving an absence of good faith would frustrate Commission efforts to ensure compliance with the Final Rule.

F. Section 321.6: Actions by States

The Omnibus Appropriations Act, as clarified by the Credit CARD Act, permits states to enforce the rules issued in connection with this rulemaking.[231] States may enforce the rules, subject to the notice requirements of the Omnibus Appropriations Act, by bringing civil actions in Federal district court or another court of competent jurisdiction. Section 321.6 tracks the statute, indicating that states have the authority to file actions against those who violate the Rule. One commenter expressed appreciation for the Commission's recognition of the states' role in combating deceptive practices by including this provision in the proposed rule.[232] Section 321.6 of the Final Rule includes only non-substantive modifications to the language that was used in this section of the proposed rule.

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[219] Gorbey at 1; HSA at 2–6; NAR at 2.

[220] *See supra* Part III.B.4.

[221] Gorbey at 1.

[222] *See supra* Part III.B.4.

[223] NAR at 2.

[224] HSA at 2–6.

[225] *See supra* Part III.B.3.

[226] Specifically, the commenter suggested the Commission add the following italicized language to the recordkeeping requirements: (1) § 321.5(a)(1) would apply to ''commercial communications *that advertise the availability of any specified mortgage credit product and are* disseminated *by such covered person*'' (2) § 321.5(a)(2) would apply to ''mortgage credit products *advertised by such covered person*''; and (3) § 321.5(a)(3) would apply to ''additional products or services * * * that are or may be offered or provided *by such covered person* with the mortgage credit products.'' HSA at 5–6. As discussed *infra,* the Commission has added clarifying language to the Final Rule to address concerns about the scope of the recordkeeping requirement.

[227] HSA at 4–6. The commenter's proposed ''good-faith exception'' states: ''The provisions of this rule [§ 321.3] shall not apply to any unintentional inaccuracy in a commercial communication, provided that such inaccuracy is the product of a diligently maintained system or process that is reasonably calculated to provide accurate information in commercial communications.'' *Id.* at 6.

[228] As noted in Part I.A.3, *supra,* the Omnibus Appropriations Act, as clarified by the Credit CARD Act, permits both the Commission and states to enforce the rules issued in connection with this rulemaking. *See* Credit CARD Act § 511(a)(1)(C) and (a)(2). As noted in Part I.A.4, *supra,* effective July 21, 2011, both the Commission and the CFPB will have the authority to enforce these rules against specific categories of ''nondepository covered persons.'' *See* Dodd-Frank Act'' 1024, 1061, 1097.

[229] *See supra* notes 226–27 and accompanying text.

[230] The law is well-established that good faith is not a defense to liability under the FTC Act. *See, e.g., FTC* v. *Cyberspace.com, LLC,* 453 F.3d 1196, 1202 (9th Cir. 2006); *FTC* v. *Freecom Communications, Inc.,* 401 F.3d 1192, 1202 (10th Cir. 2005) (''Because the primary purpose of § 5 is to protect the consumer public rather than to punish the wrongdoer, the intent to deceive consumers is not an element of a § 5 violation.''); *Removatron Int'l Corp.* v. *FTC,* 884 F.2d 1489, 1495 (1st Cir. 1989); *FTC* v. *World Travel Vacation Brokers, Inc.,* 861 F.2d 1020, 1029 (7th Cir. 1988) (''To be actionable under Section 5, these misrepresentations or practices need not be made with an intent to deceive.''); *Chrysler Corp.* v. *FTC,* 561 F.2d 357, 363 (DC Cir. 1977) (''An advertiser's good faith does not immunize it from responsibility for its misrepresentations.'').

[231] Credit CARD Act § 511(a)(2).

[232] CSBS/ACSSS/NACCA at 1.

G. Section 321.7: Severability

Section 321.7 states that the provisions of the Rule are separate and severable from one another. This provision, which is modeled after a similar provision in the TSR,[233] also states that if a court stays or invalidates any provisions in the Rule, the Commission intends the remaining provisions to continue in effect. The Commission included this provision in the proposed rule, and it did not receive any comments addressing it. The Commission has adopted the proposed provision as the Final Rule.

H. Effective Date

The Final Rule becomes effective on August 19, 2011. This 30-day timeframe was included in the proposed rule. The Commission received two comments regarding the proposed effective date. One commenter supported this timeframe, provided the Final Rule is substantially the same as the proposed rule and does not include affirmative disclosure requirements.[234] Another commenter suggested 60 days would be more appropriate to allow time to set up internal procedures to retain documents.[235]

The Commission concludes that the August 19, 2011 effective date is appropriate. The Commission has adopted a Final Rule that is substantially the same as the proposed rule and prohibits deceptive claims that are already unlawful. The Commission recognizes that some covered persons may need time to implement new recordkeeping procedures but believes that 30 days, which is the same compliance period permitted in recent Commission rulemakings,[236] will give covered persons sufficient time to modify their business practices to comply with the Rule.[237]

IV. Paperwork Reduction Act [238]

The Commission is submitting this Final Rule and a Supplemental Supporting Statement to the OMB for review under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–21. The recordkeeping requirements [239] of the Rule constitute a ''collection of information'' for purposes of the PRA.[240] The Rule does not impose a disclosure requirement. The associated PRA burden analysis follows.

A. Recordkeeping Requirements

As discussed above, the Final Rule requires covered persons to retain: (1) Copies of materially different commercial communications and related materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period; (2) documents describing or evidencing all mortgage credit products available to consumers during the relevant time period; and (3) documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the relevant time period.[241] A failure to keep such records would be an independent violation of the Rule.

Commission staff believes these recordkeeping requirements pertain to records that are usual and customary and kept in the ordinary course of business for many covered persons, such as mortgage brokers, lenders, and servicers.[242] As to these persons, the retention of these documents does not constitute a ''collection of information,'' as defined by OMB's regulations that implement the PRA.[243] Other covered persons, however, such as real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others, may not currently maintain these records in the ordinary course of business. Thus, the recordkeeping requirements for those persons would constitute a ''collection of information.''

B. Estimated Hours Burden and Associated Labor Costs

Commission staff estimates that the Final Rule's recordkeeping requirements will affect approximately 1.3 million persons [244] who would not otherwise retain such records in the ordinary course of business. As noted, this estimate includes real estate agents and brokers, advertising agencies, home builders, lead generators, rate aggregators, and others that may provide commercial communications regarding mortgage credit product terms.[245]

No comments specifically addressed or refuted this estimate or staff's associated PRA burden assumptions and calculations. Apart from revisiting data sources and including those updates in its information,[246] staff retains its previously published estimates without modification.

Although the Commission cannot estimate with precision the time required to gather and file the required records, it is reasonable to assume that covered persons will each spend approximately 3 hours per year to do these tasks, for a total of 3.9 million hours (1.3 million persons × 3 hours). Staff further assumes that office support file clerks will handle the Rule's record retention requirements at an hourly rate of $14.19.[247] Based upon the above

[233] *See* 16 CFR 310.9.

[234] AFSA at 3.

[235] OMNI at 2.

[236] *See* 75 FR 75092 (MARS); 75 FR 48458 (TSR).

[237] *See also supra* Part III.E (discussing limitations on recordkeeping requirements).

[238] OMB Control Number: 3084–0156. The Commission is required to display the OMB Control Number assigned, and affected persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

[239] Section 321.5 of the Final Rule sets forth the recordkeeping requirements.

[240] *See* 44 U.S.C. 3502(3)(A).

[241] *See* Final Rule § 321.5(a)(1)–(3). The Final Rule's recordkeeping provision is substantially the same as the proposed rule's provision and merely adds clarifying language. *See supra* Part III.E.2.

[242] Some covered persons, particularly mortgage brokers and lenders, are subject to state recordkeeping requirements for mortgage advertisements. *See, e.g.,* Fla. Stat. 494.00165 (2010); Ind. Code. Ann. 23–2–5–18 (2010); Kan. Stat. Ann. 9–2208 (2010); Minn. Stat. 58.14 (2010); Wash. Rev. Code 19.146.060 (2010). Many mortgage brokers, lenders, and servicers are also subject to state recordkeeping requirements for mortgage transactions and related documents, and these may include descriptions of mortgage credit products. *See, e.g.,* Mich. Comp. Laws Serv. 445.1671 (2010); N.Y. Banking Law 597 (Consol. 2010); Tenn. Code Ann. 45–13–206 (2010). In addition, lenders and mortgagees approved by the FHA must retain copies of all print and electronic advertisements and promotional materials for a period of two years from the date the materials are circulated or used to advertise. *See supra* note 53.

[243] *See* 44 U.S.C. 3502(3)(A); 5 CFR 1320.3(b)(2).

[244] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 1.1 million real estate brokers and agents—from the National Association of Realtors, *see http://www.realtor.org* (last visited Feb. 17, 2011); (2) 160,000 home builders (this number is 15,000 less than the estimate in the NPRM)—from the National Association of Home Builders, *see http://www.NAHB.org* (last visited Feb. 17, 2011); (3) 350 finance companies—from the American Financial Services Association, *see http://www.afsaonline.org* (last visited Feb. 17, 2011); (4) 22,170 advertising agencies—from the North American Industry Classification System Association's database of U.S. businesses, *see http://www.naics.com/naics54.htm* (last visited Feb. 17, 2011); (5) 1,000 lead generators and rate aggregators—based on staff's administrative experience. These inputs add to 1,283,520 (this number is 15,000 less than the estimate in the NPRM; for rounding, and to account further for potentially unspecified other covered persons, however, staff has increased the resulting total to 1.3 million, which is the same as the estimate in the NPRM.

[245] The Commission does not know what percentage of these persons are, in fact, engaged in covered conduct under the Rule, *i.e.,* providing commercial communications about mortgage credit product terms. For purposes of these estimates, the Commission has assumed all of them are covered by the recordkeeping provisions and are not retaining these records in the ordinary course of business.

[246] *See supra* note 244.

[247] This estimate is based on mean hourly wages for office file clerks provided by the Bureau of Labor Statistics. *See* U.S. Bur. of Labor Statistics, *National Compensation Survey: Occupational*

Continued

estimates and assumptions, the total annual labor cost to retain and file documents is $55,341,000 (3.9 million hours × $14.19 per hour).

Absent information to the contrary, staff anticipates that existing storage media and equipment that covered persons use in the ordinary course of business will satisfactorily accommodate incremental recordkeeping under the Rule. Accordingly, staff does not anticipate that the Rule will require any new capital or other non-labor expenditures.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 [248] requires the Commission to provide an Initial Regulatory Flexibility Analysis (IRFA) with a proposed rule, and a Final Regulatory Flexibility Analysis (FRFA) with a Final Rule, if any, unless the Commission certifies that the Rule will not have a significant economic impact on a substantial number of small entities.[249]

As of the date of the NPRM, the Commission anticipated that the proposed Mortgage Acts and Practices—Advertising Rule would not have a significant economic impact on a substantial number of small entities.[250] Nonetheless, the FTC published an IRFA and requested public comment on the impact on small businesses of its proposed Rule.

In response to the IRFA and questions in the NPRM, the Commission did not receive any comprehensive empirical data regarding the revenues of covered entities or the Rule's impact on small businesses. The Final Rule is substantially the same as the proposed rule. The number of entities that the Commission estimates the Final Rule will cover is 1.325 million, which is about 25,000 less than the estimate provided in the NPRM.[251] Staff's estimated minimal burden and expense for each entity's compliance is the same as it was in the NPRM.[252] Thus, the Commission does not anticipate that the Final Rule will have a significant economic impact on a substantial number of small entities. Although the Commission certified under the RFA that the Final Rule will not have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an FRFA in order to explain the impact of the Rule on small entities as follows:

A. Need for and Objectives of the Rule

The Final Rule is intended to implement Section 626 of the Omnibus Appropriations Act, as amended by the Credit CARD Act, which directs the Commission to initiate a rulemaking related to unfair or deceptive acts or practices with respect to mortgage loans. As described in Parts II and III, above, the Commission seeks to prevent deceptive acts and practices in the mortgage advertising industry, which has been the subject of numerous law enforcement actions under Section 5 of the FTC Act and TILA.

B. Significant Issues Raised by Public Comments, Summary of the Agency's Assessment of These Issues, and Changes, If Any, Made in Response to Such Comments

As discussed in Part III, above, comments to the NPRM raised concerns about burden primarily in connection with two issues: (1) Disclosures or other requirements concerning the use of multiple languages in offering mortgage credit products; and (2) recordkeeping requirements. For the reasons set forth below, the Final Rule is substantively the same as the proposed rule, with a few non-substantive clarifying edits.

1. Multiple Language Disclosures and Restrictions

In the NPRM, the Commission sought comment on several questions regarding the use of commercial communications that ''mix languages'' in connection with mortgage products, including whether the Final Rule should address this conduct by adding disclosure requirements. The Commission received several comments addressing the burdens of potential multiple language disclosure requirements.[253] One commenter stated that ''only English should be used to keep costs down for institutions.''[254] Two commenters noted the benefits to consumers of advertising and communicating in non-English languages and were concerned about the disincentives that would result from a non-English disclosure requirement.[255] These commenters opposed requiring disclosures in the consumer's preferred language, stating that the costs to business of maintaining all of the various disclosures and contracts in all of the potentially different languages that consumers use would outweigh the benefits to consumers, and would cause companies not to advertise in languages other than English to avoid the burdens of the Rule.[256] According to one of the two commenters, lenders likely would not advertise in non-English languages to avoid the risk of liability under state unfair trade practices statutes.[257] The commenter indicated that providing any required contracts in non-English languages would falsely raise consumers' expectations that they will be provided non-English language support throughout the rest of their relationship with the lender.[258]

As noted above, the Final Rule prohibits misleading claims in any language or any combination of languages.[259] The Commission did not add a specific non-English language

Earnings in the United States, 2010, Bulletin 2753, May 2011, at 3–23, tbl. 3, *available at http://www.bls.gov/ncs/ncswage2010.htm.*

[248] 5 U.S.C. 601–612.

[249] 5 U.S.C. 603–605. The definition of ''small entity'' refers to the definition provided in the Small Business Act, which defines a ''small-business concern'' as a business that is ''independently owned and operated and which is not dominant in its field of operation.'' 5 U.S.C. 601(3); 15 U.S.C. 632(a)(1).

[250] In the NPRM, the Commission estimated that the proposed rule would cover approximately 1.35 million entities. It was not known, however, how many of those entities were small entities. Nonetheless, staff estimated minimal burden and expense for each entity to comply with the proposed rule's requirements. *See* MAP—Advertising, NPRM, 75 FR at 60367 & nn.174–175.

[251] No general source provides precise numbers of the various categories of covered persons. Commission staff, therefore, has used the following sources and inputs to arrive at this estimated total: (1) 25,400 mortgage lenders and mortgage brokers (this number is 25,600 less than the 51,000 estimate in the NPRM)—from various online state regulatory agency resources and the Nationwide Mortgage Licensing System and Registry Consumer Access, *see http://www.nmlsconsumeraccess.org* (last visited between Mar. 2–Mar. 25, 2011); (2) 80 mortgage servicers (this number is 20 more than the estimate in the NPRM)—from several sources, including lists of servicers participating in various Federal programs available at *http://makinghomeaffordable.gov/contact_servicer.html* and *http://hopenow.com/members.php* (both last visited Feb. 15, 2011) (excluding lenders who are also servicers under these programs); and (3) 1.3 million others—*see supra* note 244 (explaining estimate).

[252] Staff estimates that the annual labor cost for each covered person to file or retain documents under the recordkeeping provisions was $42.57 (3 hours × $14.19 per hour). *See supra* Part IV.B (discussing labor and equipment that staff estimates are needed for compliance). *Cf.* U.S. Small Bus. Admin. Office of Advocacy, *A Guide for Government Agencies—How to Comply with the Regulatory Flexibility Act* 19 (June 2010), *available at http://www.sba.gov/advo/laws/rfaguide.pdf* (citing 126 Cong. Rec. S10,938 (Aug. 6, 1980) (identifying 175 annual staff hours for recordkeeping as a ''significant impact'')).

[253] This FRFA discusses only those comments that addressed burden concerns. For a full discussion of the multiple languages issue, see *supra* Part III.C.5.

[254] OMNI at 2.

[255] AFSA at 2–3; HPC at 2.

[256] AFSA at 2–3; HPC at 2.

[257] AFSA at 2.

[258] *Id.*

[259] *See* Final Rule § 321.2(a). In comparison, for closed-end credit, Regulation Z specifically bans providing information about some trigger terms or required disclosures only in a foreign language in the advertisement but, at the same time, providing information about other trigger terms or required disclosures only in English in that advertisement. *See* 12 CFR 226.24(i)(7).

disclosure or other related requirements to the Final Rule. Thus, the Final Rule does not increase the economic burden in connection with the multiple language issue for any covered persons, including small entities.

2. Recordkeeping Requirements

The Commission received several comments addressing burden concerns in connection with different aspects of the proposed recordkeeping requirements.[260] Two commenters supported the 24-month record retention period,[261] while another commenter suggested that the Commission impose a three to four year requirement.[262] The Final Rule retains the 24-month record retention period because it requires mortgage advertisers to retain sufficient documentation for efficient and effective compliance monitoring, while avoiding the imposition of unnecessary costs on advertisers.

One commenter expressed concern that the proposed rule did not clarify whether the records must be saved as hard or electronic copies and asserted that electronic records would save money and storage space.[263] Section 321.5(b) of the Final Rule adopts the language in the proposed rule and permits electronic or hard copies, which will limit the recordkeeping burden on all covered persons, including small entities.

Several commenters discussed the overall costs and burden associated with recordkeeping requirements, particularly with respect to advertising agencies, real estate brokers, and real estate agents.[264] One commenter advocated for an exemption from the Rule for advertising agencies, stating that agencies create and place commercial communications for a wide variety of clients, making it burdensome to retain and keep track of all communications that the Rule covers.[265] Another commenter, requesting an exemption for real estate brokers and agents, stated that the recordkeeping requirement would be an ''onerous burden'' on such persons, because they would need to track weekly changes in mortgage rates even though they are not acting as or on behalf of loan originators.[266]

Another commenter stated that the combination of the risk of liability under § 321.3 for providing mortgage-related information that proves to be inaccurate and the recordkeeping requirements under § 321.5 would discourage real estate agents and brokers from providing general mortgage-related information to clients or prospective clients.[267] This commenter suggested revising the definition of ''commercial communication'' to address this issue or, in the alternative, narrowing the recordkeeping requirements and adding a ''safe harbor'' or ''good-faith exception'' from the rule for an ''unintentional inaccuracy.''[268]

With respect to overall burden, the Commission believes that the record retention requirement is necessary to ensure that covered persons are complying with the requirements of the Final Rule. Specifically, the requirement that covered persons retain copies of their commercial communications will enable the FTC, the CFPB, and the states to review those communications for any misrepresentations that violate the Rule and to bring law enforcement actions as appropriate. The Commission recognizes that recordkeeping provisions impose compliance costs; however, many covered persons in the ordinary course of their business already retain the types of documents that the Final Rule requires be retained. As noted above, to further reduce burden, the Rule permits entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The Final Rule also limits the retention requirements to avoid imposing any unnecessary burden. For example, covered entities need retain only commercial communications that are ''materially different'' from each other.

In response to commenters' concerns about the scope of the recordkeeping requirements, the Commission's Final Rule adds clarifying language throughout § 321.5(a) that does not substantively change the provision. The Final Rule clarifies that the recordkeeping requirements, like the prohibition in § 321.3, do not apply to all commercial communications; rather, they apply to any commercial communication ''regarding any term of any mortgage credit product.'' It also clarifies that the requirements apply only to commercial communications that the covered person ''made or disseminated.'' The Commission did not make substantive changes to the recordkeeping requirements.[269] Thus, the Final Rule does not increase the economic burden in connection with recordkeeping for any covered persons, including small entities.

C. Description and Estimate of Number of Small Entities Subject to the Final Rule or Explanation Why No Estimate Is Available

The Final Rule applies to any person who makes any representation in any commercial communication regarding any term of any mortgage credit product. Based upon its knowledge of the industry, the Commission believes that a variety of individuals and companies under its jurisdiction will be covered by the Rule, including but not limited to mortgage lenders, mortgage brokers, mortgage servicers, real estate agents and brokers, advertising agencies, home builders, lead generators, and rate aggregators.

In response to the IRFA and a request for comments in the ANPR, the Commission received no empirical data regarding the numbers or revenues of any of these types of entities. On the basis of other available data, however, Commission staff estimates that there are approximately 1.325 million entities subject to the proposed rule.[270] Determining a precise estimate of how many of these, if any, are small entities is not readily feasible because of the lack of available data.[271]

[260] This FRFA discusses only those comments that addressed burden concerns. For a full discussion of the recordkeeping issue, see *supra* Part III.E.

[261] AFSA at 3; OMNI at 2.

[262] CSBS/ACSSS/NACCA at 2.

[263] OMNI at 2.

[264] Gorbey at 1; HSA at 2–6; NAR at 2.

[265] Gorbey at 1.

[266] NAR at 2.

[267] HSA at 2–6.

[268] *See supra* notes 226–27.

[269] The Commission did not add a good faith exception for unintentional deceptive claims. *See supra* note 230. The Commission's changes to the recordkeeping requirements are clarifying edits.

[270] *See supra* note 251.

[271] Covered entities are classified as small entities if they satisfy the Small Business Administrator's relevant size standards, as determined by the Small Business Size Standards component of the North American Industry Classification System (NAICS), *available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.* Because a wide range of individuals and companies may make representations in commercial communications regarding any term of a mortgage product, no one classification is applicable to this Rule.

The range in size standard for most of the relevant professional and support services is $7 million or less in annual receipts. This standard applies to, for example, real estate credit, mortgage and nonmortgage loan brokers, other nondepository credit intermediation, other activities related to credit intermediation (such as servicing), secondary market financing (such as Fannie Mae and Freddie Mac), marketing consulting services, advertising agencies, public relations agencies, display advertising, direct mail advertising, advertising material distribution services, other services related to advertising, and all other professional, scientific and technical services.

The range in size standard varies greatly for the following other types of entities that are covered by the Rule: Offices of real estate agents and brokers ($2 million or less); housing construction/builders ($33.5 million or less); and credit unions ($175 million or less).

D. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities Which Will Be Subject to the Rule and the Type of Professional Skills That Will Be Necessary To Comply

The Final Rule generally prohibits misrepresentations, consistent with the prohibition on deceptive claims that would violate Section 5 of the FTC Act. The Rule elaborates on this prohibition by including specific examples of types of misrepresentations covered by the Rule, but it does not require affirmative disclosures. The entities subject to the Rule are within the Commission's jurisdiction under the FTC Act, and thus are already prohibited from such conduct. The classes of small entities covered by the rule are discussed in Part V.C, above.

The Final Rule sets forth specific categories of records that covered persons are required to retain. The Commission believes that these recordkeeping requirements are necessary to ensure that covered entities are complying with the requirements of the Rule. They will enable the Commission, the CFPB, and the states to review copies of commercial communications for any misrepresentations that violate the Rule and to bring law enforcement actions as appropriate. The Commission recognizes that recordkeeping provisions impose compliance costs; however, many covered entities in the ordinary course of business already retain the types of documents that the Final Rule requires be retained. For those entities that may not already do so, staff estimates minimal burden and expense for each entity to comply with the requirements. The professional or other skills necessary for compliance with the Rule are discussed in the Paperwork Reduction Act analysis in Part IV.B, above. To further reduce any burden, the Rule permits covered entities to keep the records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The Final Rule also attempts to avoid imposing any unnecessary burden by limiting the recordkeeping requirements only to, for example, ''materially different'' commercial communications. It also limits the timeframe for recordkeeping to 24 months.

E. Steps the Agency Has Taken To Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Applicable Statutes

As previously noted, the Final Rule is intended to prevent deceptive acts and practices in mortgage advertising. In drafting the Rule, the Commission has made every effort to avoid unduly burdensome requirements for all entities. The Final Rule does not impose any affirmative disclosure requirements for advertisements. Further, as discussed above, Commission staff believes that many covered entities in the ordinary course of business already retain the types of documents that the Final Rule requires be retained. In addition, § 21.5(b) states that entities may keep such records in any legible form and in the same manner, format, or place as they keep such records in the ordinary course of business. The recordkeeping requirements are format-neutral; for example, they permit the use of electronic methods that might reduce compliance burdens.

The Final Rule also limits the types of information that must be retained to avoid imposing any unnecessary burden. For example, covered persons must retain only ''materially different'' versions of commercial communications and related materials. Finally, the Rule calls for a 24-month record retention period, which the Commission believes requires mortgage advertisers to retain sufficient documentation for efficient and effective compliance monitoring, while avoiding the imposition of unnecessary costs on advertisers.

The Commission is not aware of any feasible or appropriate exemptions for small entities. The protections afforded to consumers in the Rule are equally important regardless of the size of the entity making the commercial communication. Nonetheless, as discussed above, the Final Rule attempts to minimize compliance burdens and any significant economic impact for all entities, including small entities.

TABLE A—LIST OF COMMENTERS AND SHORT-NAMES/ACRONYMS

Short-Name/Acronym	Commenter
ABLE	Advocates for Basic Legal Equality
AFSA	American Financial Services Association
ABA	American Bankers Association
BECU	Boeing Employees' Credit Union
Britz	Britz, Suzy
Coe	Coe, D
CMC/MBA	Consumer Mortgage Coalition and Mortgage Bankers Association
CUAO	Credit Union Association of Oregon
CUNA	Credit Union National Association
CSBS/ACSSS/NACCA	Conference of State Bank Supervisors, American Council of State Savings Supervisors, and National Association of Consumer Credit Administrators
Gorbey	Gorbey, Jacqueline
HSA	HomeServices of America, Inc.
HPC	Housing Policy Council of The Financial Services Roundtable
IDF	Idaho Department of Finance
Johnson	Johnson, Sondra
NAR	National Association of REALTORS
NASCUS	National Association of State Credit Union Supervisors
NRMLA	National Reverse Mortgage Lenders Association
OMNI	OMNI Community Credit Union
PCUA	Pennsylvania Credit Union Association
Swider	Swider, Keith
WCUL	Washington Credit Union League

TABLE B—LIST OF FTC MORTGAGE ADVERTISING ENFORCEMENT ACTIONS

- *FTC* v. *Assocs. First Capital Corp.,* No. 1:01–00606 (N.D. Ga. 2001)
- *FTC* v. *Capital City Mortg. Corp.,* No. 1:98CV237 (D.D.C. 1998)
- *FTC* v. *Chase Fin. Funding, Inc.,* No. SACV04–549 GLT (ANx) (C.D. Cal. 2004)
- *FTC* v. *First Alliance Mortg. Co.,* No. SACV 00–964 DOC (EEx) (C.D. Cal. 2000)
- *FTC* v. *Mortgages Para Hispanos.com Corp.,* No. 4:06–cv–19 (E.D. Tex. 2006)
- *FTC* v. *Ranney,* No. 04–F–1065 (MJW) (D. Colo. 2004)
- *FTC* v. *Ryan,* No. 1:09–cv–00535–HHK (D.D.C. 2009)
- *FTC* v. *OSI Fin. Servs., Inc.,* No. 02–C–5078 (N.D. Ill. 2002)
- *FTC* v. *Safe Harbour Found. of Fla., Inc.,* No. 08–C–1185 (N.D. Ill. 2008)
- *FTC* v. *30 Minute Mortg., Inc.,* No. 03–60021 (S.D. Fla. 2003)
- *In re Am. Nationwide Mortg. Co.,* F.T.C. Dkt. No. C–4249 (2009)
- *In re Felson Builders, Inc.,* 119 F.T.C. 642 (1995)
- *In re FirstPlus Fin. Group, Inc.,* F.T.C. Dkt. No. C–3984 (2000)
- *In re Lomas Mortg. U.S.A., Inc.,* 116 F.T.C. 1062 (1993)
- *In re Michael Gendrolis,* F.T.C. Dkt. No. C–4248 (2009)
- *In re Shiva Venture Group, Inc.,* F.T.C. Dkt. No. C–4250 (2009)
- *United States* v. *Mercantile Mortg. Co.,* No. 02–C–5079 (N.D. Ill. 2002)
- *United States* v. *Unicor Funding, Inc.,* No. 9901228 (C.D. Cal. 1999)

VI. Final Rule

List of Subjects in 16 CFR Part 321

Advertising, Communications, Consumer protection, Credit, Mortgages, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends title 16, Code of Federal Regulations, by adding a new part 321, to read as follows:

PART 321—MORTGAGE ACTS AND PRACTICES—ADVERTISING

Sec.
321.1 Scope of regulations in this part.
321.2 Definitions.
321.3 Prohibited representations.
321.4 Waiver not permitted.
321.5 Recordkeeping requirements.
321.6 Actions by states.
321.7 Severability.

Authority: Public Law 111–8, section 626, 123 Stat. 524, as amended by Pub. L. 111–24, section 511, 123 Stat. 1734.

§ 321.1 Scope of regulations in this part.

This part implements the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009). This part applies to persons over which the Federal Trade Commission has jurisdiction under the Federal Trade Commission Act.

§ 321.2 Definitions.

(a) ''Commercial communication ''means any written or oral statement, illustration, or depiction, whether in English or any other language, that is designed to effect a sale or create interest in purchasing goods or services, whether it appears on or in a label, package, package insert, radio, television, cable television, brochure, newspaper, magazine, pamphlet, leaflet, circular, mailer, book insert, free standing insert, letter, catalogue, poster, chart, billboard, public transit card, point of purchase display, film, slide, audio program transmitted over a telephone system, telemarketing script, onhold script, upsell script, training materials provided to telemarketing firms, program-length commercial (''infomercial''), the Internet, cellular network, or any other medium. Promotional materials and items and Web pages are included in the term ''commercial communication.''

(b) ''Consumer'' means a natural person to whom a mortgage credit product is offered or extended.

(c) ''Credit'' means the right to defer payment of debt or to incur debt and defer its payment.

(d) ''Dwelling'' means a residential structure that contains one to four units, whether or not that structure is attached to real property. The term includes any of the following if used as a residence: an individual condominium unit, cooperative unit, mobile home, manufactured home, or trailer.

(e) ''Mortgage credit product'' means any form of credit that is secured by real property or a dwelling and that is offered or extended to a consumer primarily for personal, family, or household purposes.

(f) ''Person'' means any individual, group, unincorporated association, limited or general partnership, corporation, or other business entity.

(g) ''Term'' means any of the fees, costs, obligations, or characteristics of or associated with the product. It also includes any of the conditions on or related to the availability of the product.

§ 321.3 Prohibited representations.

It is a violation of this part for any person to make any material misrepresentation, expressly or by implication, in any commercial communication, regarding any term of any mortgage credit product, including but not limited to misrepresentations about:

(a) The interest charged for the mortgage credit product, including but not limited to misrepresentations concerning:

(1) The amount of interest that the consumer owes each month that is included in the consumer's payments, loan amount, or total amount due; or

(2) Whether the difference between the interest owed and the interest paid is added to the total amount due from the consumer;

(b) The annual percentage rate, simple annual rate, periodic rate, or any other rate;

(c) The existence, nature, or amount of fees or costs to the consumer associated with the mortgage credit product, including but not limited to misrepresentations that no fees are charged;

(d) The existence, cost, payment terms, or other terms associated with any additional product or feature that is or may be sold in conjunction with the mortgage credit product, including but not limited to credit insurance or credit disability insurance;

(e) The terms, amounts, payments, or other requirements relating to taxes or insurance associated with the mortgage credit product, including but not limited to misrepresentations about:

(1) Whether separate payment of taxes or insurance is required; or

(2) The extent to which payment for taxes or insurance is included in the loan payments, loan amount, or total amount due from the consumer;

(f) Any prepayment penalty associated with the mortgage credit product, including but not limited to misrepresentations concerning the existence, nature, amount, or terms of such penalty;

(g) The variability of interest, payments, or other terms of the mortgage credit product, including but not limited to misrepresentations using the word ''fixed;''

(h) Any comparison between:

(1) Any rate or payment that will be available for a period less than the full length of the mortgage credit product; and

(2) Any actual or hypothetical rate or payment;

(i) The type of mortgage credit product, including but not limited to misrepresentations that the product is or involves a fully amortizing mortgage;

(j) The amount of the obligation, or the existence, nature, or amount of cash or credit available to the consumer in connection with the mortgage credit product, including but not limited to

misrepresentations that the consumer will receive a certain amount of cash or credit as part of a mortgage credit transaction;

(k) The existence, number, amount, or timing of any minimum or required payments, including but not limited to misrepresentations about any payments or that no payments are required in a reverse mortgage or other mortgage credit product;

(l) The potential for default under the mortgage credit product, including but not limited to misrepresentations concerning the circumstances under which the consumer could default for nonpayment of taxes, insurance, or maintenance, or for failure to meet other obligations;

(m) The effectiveness of the mortgage credit product in helping the consumer resolve difficulties in paying debts, including but not limited to misrepresentations that any mortgage credit product can reduce, eliminate, or restructure debt or result in a waiver or forgiveness, in whole or in part, of the consumer's existing obligation with any person;

(n) The association of the mortgage credit product or any provider of such product with any other person or program, including but not limited to misrepresentations that:

(1) The provider is, or is affiliated with, any governmental entity or other organization; or

(2) The product is or relates to a government benefit, or is endorsed, sponsored by, or affiliated with any government or other program, including but not limited to through the use of formats, symbols, or logos that resemble those of such entity, organization, or program;

(o) The source of any commercial communication, including but not limited to misrepresentations that a commercial communication is made by or on behalf of the consumer's current mortgage lender or servicer;

(p) The right of the consumer to reside in the dwelling that is the subject of the mortgage credit product, or the duration of such right, including but not limited to misrepresentations concerning how long or under what conditions a consumer with a reverse mortgage can stay in the dwelling;

(q) The consumer's ability or likelihood to obtain any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such product or term;

(r) The consumer's ability or likelihood to obtain a refinancing or modification of any mortgage credit product or term, including but not limited to misrepresentations concerning whether the consumer has been preapproved or guaranteed for any such refinancing or modification; and

(s) The availability, nature, or substance of counseling services or any other expert advice offered to the consumer regarding any mortgage credit product or term, including but not limited to the qualifications of those offering the services or advice.

§ 321.4 Waiver not permitted.

It is a violation of this part for any person to obtain, or attempt to obtain, a waiver from any consumer of any protection provided by or any right of the consumer under this part.

§ 321.5 Recordkeeping requirements.

(a) Any person subject to this part shall keep, for a period of twenty-four months from the last date the person made or disseminated the applicable commercial communication regarding any term of any mortgage credit product, the following evidence of compliance with this part:

(1) Copies of all materially different commercial communications as well as sales scripts, training materials, and marketing materials, regarding any term of any mortgage credit product, that the person made or disseminated during the relevant time period;

(2) Documents describing or evidencing all mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such mortgage credit product available to consumers; and

(3) Documents describing or evidencing all additional products or services (such as credit insurance or credit disability insurance) that are or may be offered or provided with the mortgage credit products available to consumers during the time period in which the person made or disseminated each commercial communication regarding any term of any mortgage credit product, including but not limited to the names and terms of each such additional product or service available to consumers.

(b) Any person subject to this part may keep the records required by paragraph (a) of this section in any legible form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required under paragraph (a) of this section shall be a violation of this part.

§ 321.6 Actions by states.

Any attorney general or other officer of a state authorized by the state to bring an action under this part may do so pursuant to Section 626(b) of the 2009 Omnibus Appropriations Act, Public Law 111–8, section 626, 123 Stat. 524 (Mar. 11, 2009), as amended by the Credit Card Accountability Responsibility and Disclosure Act of 2009, Public Law 111–24, section 511, 123 Stat. 1734 (May 22, 2009).

§ 321.7 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

By direction of the Commission.

Donald S. Clark,

Secretary.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix A—Concurring Statement of Commissioner Ramirez, in Which Chairman Leibowitz and Commissioner Brill Join

Final Rule: Mortgage Acts and Practices—Advertising

We support the final rule the Commission issues today concerning the advertising of home mortgages (Mortgage Acts and Practices—Advertising Rule or ''MAP Rule''). The MAP Rule is narrow in scope—addressing only the advertising phase of the mortgage lifecycle by those subject to the Federal Trade Commission's jurisdiction—and does not render unlawful any conduct that is not already banned by the prohibition on deception in Section 5 of the FTC Act.[1] At the same time, the MAP Rule accomplishes several important objectives by: (1) Giving the FTC and the states authority to seek civil penalties for deceptive mortgage advertising, broadly defined, by entities subject to the FTC's jurisdiction; (2) providing guidance and clarity as to what constitutes deceptive mortgage advertising; and (3) imposing record-keeping requirements on mortgage advertisers to facilitate law enforcement. We write separately to underscore the importance of one issue addressed by the MAP Rule: Communications about mortgages to consumers whose native language is not English.

The United States population today is highly diverse, representing cultures and languages from all over the world. According to the Census Bureau, of the 281 million people age five and older in the United States in 2007, 55.4 million individuals, or nearly 20 percent, reported speaking a language

[1] 15 U.S.C. 45(a).

other than English at home.[2] Marketers are well-aware of this trend, and today they often tout a wide array of products and services, including home loans, in languages other than English.

It is essential that our consumer protection laws keep pace with such marketplace realities, and we are pleased that the MAP Rule broadly bans deception in commercial communications concerning residential mortgages regardless of the language or languages in which they are made. For example, under the MAP Rule it can be unlawful to offer a consumer one set of terms in her native language but then deliver different terms in loan documents written in English.[3] In addition, because the ''net impression'' of an advertisement is the lynchpin of deception analysis,[4] a fine print disclaimer or qualifying statement may be insufficient to cure an otherwise misleading advertisement.[5] This principle, as applied to advertising that uses multiple languages, means that, in advertising that targets consumers in a language other than English, a disclaimer in English may be insufficient to cure misleading claims in another language.[6]

But there are many questions about the communication of mortgage loan terms that go beyond the scope of this rulemaking, among them whether mortgage disclosure documents should be provided to non-English speakers in languages other than English.[7] Congress has charged the Consumer Financial Protection Bureau with the long-overdue task of simplifying and clarifying mortgage disclosure documents,[8] and has granted the new agency broad rulemaking authority with respect to the advertising and communication of mortgage loan terms. We look forward to the results of the CFPB's work in this area, including its consideration of the needs of non-native English speaking consumers when carrying out that important mandate.[9]

More generally, given our country's changing demographics, we believe that government and industry alike will need to pay greater attention to ensuring that consumers, no matter what language they speak, have access to important information regarding their purchases and are protected from unfair and deceptive practices.

Appendix B—Response of Commissioner J. Thomas Rosch to the Concurring Statement of Commissioner Ramirez, in Which Chairman Leibowitz and Commissioner Brill Join

Final Rule: Mortgage Acts and Practices—Advertising

July 19, 2011

I agree with the concurring statement of Commissioner Ramirez concerning the Mortgages Acts and Practices—Advertising Rule to the extent it reiterates the assertions of the Statement of Basis and Purpose that the ''net impression'' of an advertisement is a touchstone of FTC deception analysis regardless of the language or combination of languages. It is also axiomatic that government and industry need to be vigilant that all consumers, regardless of what language they speak, are not victims of unfair and deceptive practices.

However, insofar as the concurring statement suggests that the Consumer Financial Protection Bureau should require that mortgage disclosure documents be provided to non-English speaking consumers in their native language, I disagree. There is no basis for making any recommendation to ''go beyond'' the MAP Rule or Section 5 as respects requirements that lenders furnish ''non-English speakers'' with disclosures that are not in English. *See* Concurring Statement at 3. Specifically, Census Bureau data showing that nearly 20 percent of people in the United States in 2007 ''reported speaking a language other than English at home'' (*id.* at 1) does not suggest that they could not read or understand English. Indeed, so far as the rulemaking record for the MAP Rule is concerned, it is my understanding that a majority of the comments received favored making disclosures only in English. Thus, there is currently no basis for the Federal government to burden this industry with disclosure requirements that would oblige the industry to make disclosures in a language other than English except when the ''net impression'' left by not doing so would violate Section 5.

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[2] U.S. Census Bureau, *Language Use in the United States: 2007* (Apr. 2010), *available at http://www.census.gov/prod/2010pubs/acs-12.pdf.*

[3] In fact, the FTC has challenged such a practice as deceptive under Section 5 of the FTC Act. *See FTC* v. *Mortgages Para Hispanos.com Corp.,* No. 4:06–cv19 (E.D. Tex. 2006) (alleging mortgage broker engaged in deceptive practices by orally offering Spanish-speaking customers one thing in Spanish and then delivering something else in loan documents written entirely in English).

[4] *See, e.g., FTC* v. *Cyberspace.com, LLC,* 453 F.3d 1196, 1200 (9th Cir. 2006); *FTC* v. *Nat'l Urological Group, Inc.,* 645 F. Supp. 2d 1167, 1189 (N.D. Ga. 2008), *aff'd,* 356 Fed. App'x (11th Cir. 2009).

[5] *See, e.g., Cyberspace.com,* 453 F.3d at 1200.

[6] In 2008, the Board of Governors of the Federal Reserve System amended Regulation Z under the Truth in Lending Act to prohibit advertising certain information only in a foreign language while providing, in the same advertisement, other critical information in English. *See* Final Rule, Truth in Lending, 73 FR 44522, 44601 (Jul. 30, 2008) (codified at 12 CFR 226.24(i)(7)). This approach is consistent with longstanding FTC requirements that mandatory disclosures be made in the language of the target audience. *See* 16 CFR 14.9 (under FTC rules, cease-and-desist orders, and guides that require the ''clear and conspicuous'' disclosure of information, such disclosure must be made in the language of the target audience); 16 CFR 610.4(a)(3)(ii) (in marketing free credit reports, mandatory disclosures must be made in the same language as that principally used in the advertisement); 16 CFR 429.1(a) (in door-to-door sales, failure to furnish a completed receipt or contract in the same language as the oral sales presentation is an unfair and deceptive act or practice); 16 CFR 455.5 (where used car sales pitches are conducted in Spanish, mandatory disclosures must be made in Spanish); 16 CFR 308.3(a)(1) (mandatory disclosures about pay-per-call services must be made in the same language as that principally used in the advertisement); *see also* FTC Final Rule, Free Annual File Disclosures, 75 FR 9726, 9733 (Mar. 3, 2010) (noting ''the Commission's belief that a disclosure in a language different from that which is principally used in an advertisement would be deceptive'').

[7] The CFPB has begun testing draft prototype mortgage disclosure documents in English and Spanish in advance of a formal rulemaking process. *See* CFPB, *Consumer Financial Protection Bureau Announces Initiative to Combine Mortgage Loan Disclosures* (May 18, 2011), *available at http://www.consumerfinance.gov/pressrelease/consumer-financial-protection-bureau-announces-initiative-to-combine-mortgage-loan-disclosures/.*

[8] *See generally James M. Lacko & Janis K. Pappalardo, Federal Trade Commission Staff Report, Improving Consumer Mortgage Disclosures: An Empirical Assessment of Current And Prototype Mortgage Disclosure Forms* (2007), *available at http://www.ftc.gov/os/2007/06/P025505Mortgage DisclosureReport.pdf.*

[9] Our colleague, Commissioner Rosch, expresses concern that we may be advancing an argument about mortgage disclosures that is not supported by the record before us. But far from prejudging the outcome of any work to be performed by the CFPB, we are simply highlighting some of the important consumer protection issues that may arise in connection with mortgage advertisements targeting consumers whose primary language is not English. As we noted above, the matters before the Commission in this rulemaking were narrow, and the evidence received on the issue of the use of multiple languages in advertising—a mere four comments—does not address the questions to be examined by the CFPB concerning improvements to mortgage disclosure documents. While this limited record does not purport to address such issues, we have no doubt that in considering this and other questions, the CFPB will develop a full and complete record that properly takes into account the impact on all stakeholders of any measure that is designed to ensure that consumers receive clear and accurate information to assist them in making sound decisions about mortgages.

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

[CPSC Docket No. CPSC–2011–0007]

Poison Prevention Packaging Requirements; Exemption of Powder Formulations of Colesevelam Hydrochloride and Sevelamer Carbonate

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Consumer Product Safety Commission (''CPSC,'' ''Commission,'' or ''we'') is amending its child-resistant packaging requirements to exempt powder formulations of two oral prescription drugs, colesevelam hydrochloride and sevelamer carbonate. Colesevelam hydrochloride, currently marketed as Welchol®, is available in a powder formulation and is indicated to reduce elevated LDL cholesterol levels and improve glycemic control in adults with type 2 diabetes mellitus. Sevelamer carbonate, currently marketed as Renvela®, is also available as a powder formulation and is indicated for the control of elevated serum phosphorus in chronic kidney disease patients on dialysis. The rule exempts these

prescription drug products on the basis that child-resistant packaging is not needed to protect young children from serious injury or illness from powder formulations of colesevelam hydrochloride and sevelamer carbonate because the products are not acutely toxic, lack adverse human experience associated with acute ingestion, and, in powder form, are not likely to be ingested in large quantities by children under 5 years of age.

DATES: The rule becomes effective on July 22, 2011.

FOR FURTHER INFORMATION CONTACT: John Boja, Office of Compliance, Consumer Product Safety Commission, Bethesda, MD 20814–4408; telephone (301) 504–7300; *jboja@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

1. The Poison Prevention Packaging Act of 1970 and Implementing Regulations

The Poison Prevention Packaging Act of 1970 (''PPPA''), 15 U.S.C. 1471–1476, gives the Commission authority to establish standards for the ''special packaging'' of household substances, such as drugs, when child-resistant (''CR'') packaging is necessary to protect children from serious personal injury or illness due to the substance and the special packaging is technically feasible, practicable, and appropriate for such substance. Accordingly, CPSC regulations require that oral prescription drugs be in CR packaging. 16 CFR 1700.14(a)(10). The powder forms of cholestyramine and colestipol, two drugs that are chemically similar to colesevelam hydrochloride and sevelamer carbonate, currently are exempt from CR packaging. *Id.* 1700.14(a)(10)(v) and (xv).

CPSC regulations allow companies to petition the Commission for exemption from CR requirements. 16 CFR part 1702. Among the possible grounds for granting an exemption are that:

> The degree or nature of the hazard to children in the availability of the substance, by reason of its packaging, is such that special packaging is not required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting the substance.

16 CFR 1702.17.

2. The Products for Which Exemptions Are Sought

a. Welchol® (Colesevelam Hydrochloride)

On February 24, 2009, Daiichi Sankyo, Inc. (''Daiichi'') petitioned the Commission to exempt the powdered form of colesevelam hydrochloride, which it markets as Welchol®, from the special packaging requirements for oral prescription drugs. The petitioner stated that the exemption is justified because of lack of toxicity and lack of adverse human experience with the drug. Welchol® has been marketed in tablet form and dispensed in CR packaging. On October 2, 2009, the U.S. Food and Drug Administration (''FDA'') approved a new powder formulation of the drug. The petition requested an exemption only for the powder dosage form of Welchol®. The product, in tablet form, would continue to be in CR packaging.

Welchol® is a bile acid sequestrant indicated as an adjunct to: (1) Reduce elevated low-density lipoprotein cholesterol (LDL–C) levels; and (2) improve glycemic control in adults with type 2 diabetes mellitus. The new dosage form of Welchol® provides 1.875 g or 3.75 g of the powdered drug in unit dose packages to be mixed with water and taken orally as a suspension. (A unit dose package of Welchol® is a pouch that contains an individual dose.)

b. Renvela® (Sevelamer Carbonate)

On March 6, 2009, Genzyme Corporation (''Genzyme'') petitioned the Commission to exempt the powdered form of sevelamer carbonate, which it markets as Renvela,® from the special packaging requirements for oral prescription drugs. The petitioner stated that the exemption is justified because of lack of toxicity and lack of adverse human experience with the drug.

Renvela® is a phosphate binder indicated for the control of serum phosphorus in patients with chronic kidney disease on dialysis. The tablets are marketed with a pill crusher for patients who have trouble swallowing the tablets. The company reformulated Renvela® as a powder to be taken as an oral suspension, and the FDA approved this powder formulation on August 12, 2009. The new dosage form of Renvela® provides either 0.8 g or 2.4 g of Renvela® powder in unit dose packages to be mixed with 2 ounces of water.

B. Proposed Rule

On February 16, 2011, we published a notice of proposed rulemaking (''NPR'') proposing to exempt from special packaging the powder forms of colesevelam hydrochloride (Welchol®) and sevelamer carbonate (Renvela®). 76 FR 8942. As explained in the preamble to the proposed rule, we considered the two exemption petitions together because Welchol® and Renvela® have similar chemical structures, biological properties, and powder formulations.

C. Toxicity and Human Experience Data

1. Summary of Data From Proposed Rule

As noted in the preamble to the proposed rule (76 FR at 8943), the systemic toxicity of colesevelam hydrochloride and sevelamer carbonate is limited because they are not absorbed from the gastrointestinal (GI) tract. There is no data indicating that either drug is acutely toxic. Acute toxicity is the type of toxicity that is of concern when considering whether CR packaging is appropriate. Even in patients taking these drugs chronically, the adverse effects are mostly minor, such as diarrhea, nausea, constipation, flatulence, and dyspepsia.

If a child were to ingest accidentally Welchol® or Renvela®, the potential for the occurrence of mild to moderate GI discomfort, such as indigestion, constipation, nausea, and vomiting does exist. However, a review of relevant data indicates that an acute ingestion of these drugs would not result in serious toxicity.

CPSC's CR packaging regulations exempt cholestyramine and colestipol in powder form, two bile acid sequestrants that are similar chemically to Welchol® and Renvela.® We have not found any relevant articles in the medical literature describing toxic effects following the acute ingestion of either cholestyramine or colestipol from 1975 through 2010.

As discussed in the preamble to the proposed rule (76 FR at 8944), we searched the following databases for incidents related to Welchol® and Renvela® occurring between 2000 and 2009: the Injury and Potential Injury Incident database (''IPII''), the National Electronic Injury Surveillance System database (''NEISS''), and the Death Certificates database (''DTHS''). We found one incident involving Welchol® in the NEISS database. In that incident, 11-month-old twin boys were taken to the emergency room after they had been playing with their grandmother's prescription medications. It is not clear how many, if any, pills the boys ingested, but the children were treated and released from the hospital. We also searched Poisindex,® Pub Med, and Google for Welchol,® Renvela,® colestipol, and cholestyramine, and found no relevant incidents of acute poisoning in humans.

Before publication of the proposed rule, and as noted therein, we also analyzed Medwatch reports obtained from the FDA. Medwatch is the FDA's program for reporting a serious adverse event, product quality problem, product

use error, or therapeutic inequivalence/failure that may be associated with the use of an FDA-regulated drug, biologic, medical device, dietary supplement, or cosmetic. (See *http://www.fda.gov/Safety/MedWatch/HowToReport/default.htm*.) There may be adverse events that have occurred and are not reported in the Medwatch database. Also, the existence of a report in the database does not mean necessarily that the product actually caused the adverse event.

The FDA gave us 151 distinct incidents of adverse events associated with Welchol® reported through the Medwatch system. We excluded incidents where other medications may have caused the adverse event reported, resulting in 22 adverse events. Most adverse events reported to Medwatch were gastrointestinal or involved muscle pain, which is to be expected considering the adverse effects reported from clinical trials of Welchol.®

We also received reports from the FDA of 40 distinct incidents of adverse events associated with Renvela.® We excluded incidents where other medications may have caused the adverse event reported, resulting in five in-scope incidents. Two of the five incidents were deaths, which most likely were related to the underlying disease and not treatment with Renvela.® One of the five incidents involved intestinal obstruction and perforation, which the patient's physician thought were possibly related to the patient's treatment with Renvela.® In the two remaining incidents, one patient experienced gastroenteritis, and the other (who had asthma and chronic obstructive pulmonary disease) suffered severe breathing problems while on Renvela.® Neither of these two results likely was related to Renvela.®

2. Updated Injury Data

We updated the injury data since publication of the proposed rule. We searched the IPII, NEISS, and death certificate databases from 2000 through 2010, for incidents associated with Welchol,® Renvela,® and related drugs (*i.e.,* cholestyramine (Questran®) and colestipol (Colestid®)). We did not identify any incidents related to Renvela,® Questran,® or Colestid,® and identifed only one new Welchol®-related case. This incident occurred in July 2010, when a 19-month-old boy was found in his crib with an open Tylenol® bottle. The bottle was previously used for carrying Welchol® and other drugs. It was not clear from the report if any Welchol® tablets were in the bottle when the child accessed it. The child was taken to the emergency department, held overnight for observation, and then released the next day.

Additionally, we searched Poisindex® (a comprehensive database which identifies the toxicity of commercial, biological, and pharmaceutical products), and the medical literature for updated information on colesevelam hydrochloride and sevelamer carbonate colestipol, and cholestyramine. We found no incidents of acute poisoning in humans through this search.

3. Powder Formulations Generally

We also evaluated the likelihood of children younger than 5 years old ingesting powdered substances. The powdered form of these substances makes them more difficult to ingest than medicines in other forms and therefore, likely will keep children from ingesting significant quantities. It would be difficult for children under 5 years old to eat large amounts of powder quickly without aspirating or coughing. It also would be difficult for children to mix powder thoroughly in a liquid, and the resulting lumpy quality may be unappealing to children who try to drink it. Although children are likely to be able to tear open the non-child-resistant packets used for Welchol® and Renvela,® they are likely to spill much of the contents; therefore, they would have to open a number of packages to access a significant quantity of the drug. Most unintentional poisonings among children occur during short lapses in direct visual supervision. The difficulty posed by ingestion of powder introduces a delay in the poisoning scenario, and supervision is likely to resume before a child can take in a significant quantity.

As noted in the preamble to the proposed rule (76 FR at 8944), the packages used with the powder formulations of Welchol® and Renvela® also reduce the likelihood of child poisoning. Both drugs are provided in small, foil-lined packages containing individual doses. The Renvela® package is easy to tear only at the notch. Because the package must be opened at a precise location, it is less accessible, especially to young children. The Welchol® package does not have a notch and has uniform resistance to tearing, which makes it more difficult to open than Renvela.® Although both packages tear easily enough to be opened by children under 5 years of age, the fine motor skills of children in this age group are still developing, and such children are likely to spill most of the powder.

D. Response to Comments on the Proposed Rule

We published a notice of proposed rulemaking in the **Federal Register** on February 16, 2011, to exempt colesevelam hydrochloride (Welchol®) and sevelamer carbonate (Renvela®) from the special packaging requirements of the PPPA. 76 FR 8942. The proposed rule would amend our existing regulations at 16 CFR § 1700.14 by adding a new paragraph (a)(10)(xxii) to exempt coleselam hydrochloride in powder form in packages containing not more than 3.75 grams of the drug. The proposed rule also would create a new paragraph (a)(10)(xxiii) to exempt sevelamer carbonate in powder form in packages containing not more than 2.4 grams of the drug. We received 27 comments, with 15 supporting the proposed rule. In general, the comments did not address the codified text; instead, they focused on issues relating to the drugs themselves. The comments are available at *http://www.regulations.gov/#!docketDetail;rpp=50;po=0;D=CPSC–2011–0007*. This section summarizes the issues raised by the comments and provides responses to those issues. Each summarized issue is identified below as a single comment, and the word ''Comment,'' in parentheses, will appear before the summary description of all comments on that issue, and the word ''Response,'' in parentheses, will appear before our response to the issue. We also have numbered each summarized issue as a separate comment to help distinguish between the different issues raised by the commenters and summarized by us. They are listed in no particular order.

1. Concern About Possible Harm to Children

(Comment 1)—Some commenters were concerned about what they felt was a lack of data, and they thought that these drugs could be harmful to children (*e.g.,* cause bowel obstruction, electrolyte/serum glucose imbalance, and death), particularly if ingested in large amounts. One commenter also questioned the use of adverse effect data from adults and animals in predicting toxicity from accidental poisoning in children.

(Response 1)—We typically consider all available data in toxicity assessments, with human data taking precedence over animal data. While limited data are available on the acute toxicity of Welchol® and Renvela® in children, the adverse effects reported are similar to those in adults. Because these drugs are not absorbed

systemically, acute adverse effects typically are limited to the GI tract and are unlikely to be serious. An extension of these effects would be expected in an overdose scenario. Notably, intestinal obstruction has only been observed during therapeutic use of these drugs in patients whose health has been compromised otherwise (*e.g.,* low birth weight, chronic kidney disease, and adhesions). Cases have been documented in infants and one child following treatment with a similar drug, cholestyramine. In addition, a 45-year-old male developed an intestinal obstruction, perforation, and an abdominal fistula (abnormal opening in the stomach or bowel, which allows the contents to leak) after several months of treatment with Renvela.® Intestinal obstruction has occurred very rarely after treatment with Welchol.® In fact, Welchol ® has a greater specificity for bile acids than cholestyramine and colestipol and has been suggested to have greater gastrointestinal tolerance than the other two drugs.

Based on all available information, an imbalance of electrolytes or glucose control is unlikely to occur following an acute exposure to Welchol ® or Renvela.® No unexpected laboratory tests were seen following chronic administration of 3.75 grams g/day of Welchol ® to pediatric subjects with heterozygous familial hypercholesteremia or 15 g/day of Renvela ® to normal volunteers. Chronic administration of Welchol ® decreased fasting glucose levels 3.9–15.9 mg/dl. Because a blood glucose goal is 100–180 mg/dl for children, it is unlikely that acute administration of Welchol ® would cause hypoglycemia (*i.e.,* low blood sugar) in a child (less than 60 mg/dl).

Moreover, as discussed in section C of this preamble, there are no available poisoning data showing that these drugs cause serious toxicity following an acute exposure.

2. Questions About Powder Form

(Comment 2)—Some commenters argued that: (1) The powder may present a choking hazard to children; and (2) there is little support for claims that the powders are more difficult for children to ingest, access from the packet without spilling, and mix thoroughly in a liquid.

(Response 2)—The low acute toxicity of Welchol® and Renvela® is a key factor for the exemptions. Additionally, CPSC's Human Factors staff considered relevant data and medical literature to conclude that powders generally present a low risk because they are more difficult to ingest, particularly in large quantities. Generally, with the exception of caustics, the primary exposure risk associated with powders is aspiration. Notably, any potential choking hazard with these drugs could also occur with any non-pharmaceutical powder formulation available in the household, such as soaps, baby powder, drink mixes, and food products.

We maintain that a child would have difficulty opening the packet of either of these drugs and mixing the powder with a liquid because of the lack of precision and control required. Moreover, there are no available poisoning data with these or similar drugs (colestipol or cholestyramine) to indicate otherwise.

3. Mixing With Other Substances

(Comment 3)—One commenter stated that he believes that ''the drug can potentially be mixed with something to create an adverse reaction.''

(Response 3)—The commenter provided no evidence to suggest that this is a likely event, and no information or examples of a substance that would cause an adverse reaction when mixed with Welchol® or Renvela®. Although it is possible that a child might mix the powder with a liquid in imitation of an adult, it is highly unlikely that a child would do so repeatedly because a small child can drink only a limited amount of liquid at one time. In addition, the consistency of incompletely mixed powder is likely to deter repetition.

4. Benefits of the Exemptions

(Comment 4)—Some commenters asserted that benefits from the CR exemptions are limited: increased profits for the manufacturers of the drugs; and ease of opening the package.

(Response 4)—Exempting from CR requirements the powder forms of Welchol® and Renvela® may increase patient compliance. Poor adherence to medication regimens for chronic health issues is a well-established concern. Easier access to these drugs could benefit patients with minimal or no risk to children.

E. Effective Date

This rule exempts two drugs that otherwise would be subject to CR packaging requirements under the PPPA. Because the rule grants an exemption, it is not subject to the usual requirement under the Administrative Procedure Act (''APA'') that a rule must be published 30 days before it takes effect. 5 U.S.C. 553(d)(1). Therefore, it is appropriate for the rule to become effective upon publication in the **Federal Register**.

F. Regulatory Flexibility Act Certification

Under the Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601 *et seq.,* an agency that engages in rulemaking generally must prepare initial and final regulatory flexibility analyses describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As noted in the preamble to the proposed rule (76 FR at 8945), the Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to exempt powder formulations of Welchol® and Renvela® from special packaging requirements. Based on this assessment, we preliminarily concluded that the proposed amendment exempting powder formulations of Welchol® and Renvela® from special packaging requirements would not have a significant impact on a substantial number of small businesses or other small entities. We received no comments on this assessment or any additional information. Therefore, we conclude that exempting powder formulations of colesevelam hydrochloride (currently marketed as Welchol® and sevelamer carbonate (currently marketed as Renvela® from special packaging requirements would not have a significant impact on a substantial number of small businesses or other small entities.

G. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with the Council on Environmental Quality regulations and CPSC procedures for environmental review, we have assessed the possible environmental effects associated with the proposed PPPA amendment. As discussed in the preamble to the proposed rule, CPSC regulations state that rules requiring special packaging for consumer products normally have little or no potential for affecting the human environment. 16 CFR 1021.5(c)(3). Nothing in this rule alters that expectation. Therefore, because the rule would have no adverse effect on the environment, neither an environmental assessment nor an environmental impact statement is required.

H. Executive Orders

According to Executive Order 12988 (February 5, 1996), agencies must state

in clear language the preemptive effect, if any, of new regulations.

The PPPA provides that, generally, when a special packaging standard issued under the PPPA is in effect, ''no State or political subdivision thereof shall have any authority either to establish or continue in effect, with respect to such household substance, any standard for special packaging (and any exemption therefrom and requirement related thereto) which is not identical to the [PPPA] standard.'' 15 U.S.C. 1476(a). A state or local standard may be excepted from this preemptive effect if: (1) the state or local standard provides a higher degree of protection from the risk of injury or illness than the PPPA standard; and (2) the state or political subdivision applies to the Commission for an exemption from the PPPA's preemption clause and the Commission grants the exemption through a process specified at 16 CFR part 1061. 15 U.S.C. 1476(c)(1). In addition, the Federal government, or a state or local government, may establish and continue in effect a nonidentical special packaging requirement that provides a higher degree of protection than the PPPA requirement for a household substance for the Federal, state, or local government's own use. 15 U.S.C. 1476(b).

Thus, with the exceptions noted above, the rule exempting powder formulations of Welchol® and Renvela® from special packaging requirements preempts nonidentical state or local special packaging standards for the substances.

List of Subjects in 16 CFR Part 1700

Consumer protection, Drugs, Infants and children, Packaging and containers, Poison prevention, Toxic substances.

For the reasons given above, the Commission amends 16 CFR part 1700 as follows:

PART 1700—[AMENDED]

■ 1. The authority citation for part 1700 continues to read as follows:

Authority: 15 U.S.C. 1471–76. Secs. 1700.1 and 1700.14 also issued under 15 U.S.C. 2079(a).

■ 2. Section 1700.14 is amended by adding paragraphs (a)(10)(xxii) and (xxiii) to read as follows:

§ 1700.14 Substances requiring special packaging.

(a) * * *

(10) * * *

(xxii) Colesevelam hydrochloride in powder form in packages containing not more than 3.75 grams of the drug.

(xxiii) Sevelamer carbonate in powder form in packages containing not more than 2.4 grams of the drug.

* * * * *

Dated: July 18, 2011.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2011–18511 Filed 7–21–11; 8:45 am]

BILLING CODE 6355–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15 and 20

RIN 3038–AD17

Large Trader Reporting for Physical Commodity Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting reporting regulations (''Reporting Rules'') that require physical commodity swap and swaption (for ease of reference, collectively ''swaps'') reports. The new regulations require routine position reports from clearing organizations, clearing members and swap dealers and also apply to reportable swap trader positions.

DATES: *Effective Dates:* This rulemaking shall become effective September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Bruce Fekrat, Senior Special Counsel, Office of the Director, (202) 418–5578, *bfekrat@cftc.gov,* or Ali Hosseini, Attorney-Advisor, Office of the Director, (202) 418–6144, *ahosseini@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background and Summary of Comments

A. Background

On November 2, 2010, the Commission proposed Reporting Rules that, in addition to establishing recordkeeping requirements, require routine swaps position reports from clearing organizations, clearing members and swap dealers and apply non-routine reporting requirements to large swaps traders.[1] The Reporting Rules, as finalized and adopted herein, will allow the Commission to administer its regulatory responsibilities under the Commodity Exchange Act (''CEA or Act'') by implementing and conducting effective surveillance of economically equivalent physical commodity futures, options and swaps. The Reporting Rules will directly support the Commission's transparency initiatives such as its dissemination of Commitments of Traders and Index Investment Data Reports and will allow the Commission to monitor compliance with the trading requirements of the Act.[2]

The Commission currently receives and uses for market surveillance and enforcement purposes, data on large positions in all physical commodity futures and option contracts traded on designated contract markets (''DCMs''). Without the Reporting Rules, there would be no analogous reporting system in place for economically equivalent swaps, which until recently were largely unregulated financial contracts. The Reporting Rules, as discussed below, are reasonably necessary for the effective surveillance of economically equivalent futures and swaps.

B. Proposed Reporting Rules Summary of Comments

The Commission received approximately 130 comment letters, and engaged in several *ex parte* communications, for the proposed Reporting Rules. The Commission has carefully reviewed and considered the submitted comments. Substantive comments pertinent to specific provisions in the rulemaking are summarized and discussed below and in other sections of this notice.

The National Futures Association (''NFA'') submitted a comment[3] suggesting that its issuance of trader identifications should be a part of the position reporting process. Although beyond the scope of this rulemaking as proposed, the Commission may review the feasibility of adopting such an approach as a part of its ongoing updating and revision of other transaction and position reporting requirements.

The Air Transport Association (''ATA''), Better Markets Inc. (''Better Markets''), the Petroleum Marketers Association of America (''PMAA'') and New England Fuel Institute (''NEFI''), and Robert Pollin and James Heintz of the Political Economy Research Institute

[1] 75 FR 67258, November 2, 2010. Comments and *ex parte* communications list *available at http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889.*

[2] *See* 76 FR 4752, January 26, 2011.

[3] Letter from Thomas W. Sexton, Senior Vice President and General Counsel, NFA, to David A. Stawick, Secretary, CFTC (December 2, 2010).

(''PERI'') indicated support for the proposed regulations.[4] ATA supported the proposal as a practical solution to the Commission's current lack of swaps position data. Better Markets stated its support for the use of futures equivalence and the assembly of data based on price relationships. PMAA and NEFI argued the regulations will provide for a solid foundation for position limits.

Bindicap Comster, the Futures Industry Association (''FIA'') and a working group of commercial energy firms (''Working Group''), meanwhile, opposed the proposed regulations,[5] arguing that an expanded special call reporting mechanism, similar to the special call that the Commission has issued to support its Index Investment Data and Commitments of Traders Reports, would be a better alternative to the proposed regulations while remaining consistent with the requirements of the Act.[6] The Commission notes that its current special call for Index Investment Data Reports is a targeted collection of data. It gathers information related to specific products from a limited set of market participants. The special call was not intended to function as a tool for general market surveillance, including compliance with section 4a of the Act. In order to be able to gather data of the quality needed to conduct market surveillance the special call would have to undergo substantial modifications, such as requiring much more granular data by counterparty in a data stream on or close to a next-day basis, which in effect would convert it into the Reporting Rules.

FIA and the Working Group also questioned whether the Commission has sufficient authority to adopt such regulations. FIA argued that the Commission's authority is not clear because of the CEA section 2(h) reporting exemption for swaps on exempt commodities. The Working Group argued that the proposal is not required by the Dodd-Frank Act and that it is not necessary to comply with CEA section 4a(a)(1). The Commission has requisite statutory authority for the Reporting Rules based on CEA sections 4a, 4t and 8a(5). Specifically, section 4a of the CEA, as amended by the Dodd-Frank Act, directs the Commission to establish position limits, as appropriate, for physical commodity swaps.[7] Section 737 of the Dodd-Frank Act, which amended section 4a to direct the Commission to impose these limits, became effective on the date of enactment of the Dodd-Frank Act—*i.e.,* July 21, 2010. Section 8a(5) of the CEA authorizes the Commission to promulgate such regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the CEA. In the Commission's judgment, the Reporting Rules are reasonably necessary to implement the statutory mandate in section 4a for the Commission to establish position limits, as appropriate, on an expedited basis.

In addition, section 4t of the Act authorizes the Commission to establish a large trader reporting system for significant price discovery function swaps, of which economically equivalent swaps are a subset. Swaps position reports are a necessary component of an effective surveillance program. Accordingly, the Commission is adopting the subject swap reporting requirements pursuant to its authority in sections 4a and 4t of the CEA, as described above.

With regard to the future establishment of swap data repositories (''SDRs'') and whether the Commission should wait for SDRs to provide swaps position data instead of adopting the regulations, ATA argued that the Commission should proceed with the regulations and not wait for SDRs to become operational. FIA and the Working Group, on the other hand, argued that the future role of SDRs makes adoption of the regulations unnecessary. The Commission has determined that the Reporting Rules are reasonably necessary for several reasons. It is likely that physical commodity SDRs will require the most time to become operational since, unlike for swaps in the interest rate, equity and credit default asset categories, there currently is no functional and accepted data repository for swaps in the energy, metal or agricultural commodity asset categories. In addition, even after SDRs have been established, because they are fundamentally transaction repositories, it may be a considerable time before SDRs are able to reliably convert transaction data into positional data. Thus, in view of the considerable time before physical commodity swap SDRs are likely to be operational and have the ability to convert transactions to positions, the Commission has determined to adopt the Reporting Rules. In order to address concerns raised about the possibility of redundant regulatory obligations, however, the Reporting Rules do include, in final regulation 20.9, a sunset provision.

Better Markets, FIA and the Working Group, as well as a not-for-profit electric end-user coalition (''Electric End User Coalition''),[8] argued that the proposed regulations should not be adopted by the Commission until regulations defining the terms ''swap dealer'' and ''swap'' are adopted first. As further explained below, the Commission has determined to tie the compliance date of the regulations for swap dealers that are not clearing members to the effective date of the ''swap dealer'' definition final rulemaking.[9] With regard to the ''swap'' definition, the Commission has determined to utilize, on a transitional basis and until final definitional regulations become effective, a definition of ''swap'' that is based on the

[4] Letter from David A. Berg, Vice President and General Counsel, ATA, to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from Dennis M. Kelleher, President & CEO, and Wallace C. Turbeville, Derivatives Specialist, Better Markets Inc., to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from Dan Gilligan, President, PMAA, and Shane Sweet, President & CEO, NEFI, to David A. Stawick, Secretary, CFTC (December 2, 2010); and letter from Robert Pollin, Professor of Economics and Co-Director, and James Heintz, Associate Research Professor and Associate Director, PERI, to David A. Stawick, Secretary, CFTC (December 2, 2010).

[5] Letter from Bindicap Comster to David A. Stawick, Secretary, CFTC (December 2, 2010); letter from John M. Damgard, President, FIA, to David A. Stawick, Secretary, CFTC (December 2, 2010); and letter from R. Michael Sweeney Jr., David T. McIndoe, and Mark W. Menezes, Counsel for the Working Group, to David A. Stawick, Secretary, CFTC (December 2, 2010).

[6] The Commission conducts its current special call pursuant to Commission regulation 18.05. Swap dealers and index traders that receive a special call file monthly reports with the Commission within five business days after the end of the month.

[7] Section 754 of the Dodd-Frank Act provides that, unless otherwise provided, the provisions of subtitle A of Title VII ''shall take effect on the later of 360 days after the date of the enactment of this subtitle or, to the extent a provision of this subtitle requires a rulemaking, not less than 60 days after publication of the final rule or regulation implementing such provisions of this subtitle.'' CEA section 4a, as amended by Dodd-Frank section 737, requires the Commission to establish position limits for exempt commodities within 180 days after the date of enactment, and position limits for agricultural commodities within 270 days after the date of enactment. The Commission is proceeding deliberatively to meet this Congressional mandate. As previously noted, on November 2, 2010, the Commission proposed these Reporting Rules, and on January 26, 2011, the Commission proposed position limits, including aggregate limits, for 28 major physical commodity DCM contracts and economically equivalent swaps.

[8] Letter from Russell Wasson, Director, Tax, Finance and Accounting Policy, National Rural Electric Cooperative Association, Susan N. Kelly, Senior Vice President of Policy Analysis and General Counsel, American Public Power Association, and Noreen Roche-Carter, Chair, Tax & Finance Task Force, Large Public Power Council, to David A. Stawick, Secretary, CFTC (December 2, 2010).

[9] *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,''* 75 FR 80174, December 21, 2010.

reference to ''commodity swap'' within the definition of ''swap agreement'' in part 35 of the Commission's regulations. Swap market participants have relied on the definition of ''swap agreement'' for exempting transactions from the CEA since 1993. As a result, market participants have an understanding of the general nature of the definition of commodity swap. The swaps that would be subject to the Reporting Rules would be the same under both definitions.

With regard to the definition of ''reporting entity,'' FIA and the Working Group argued that it is overly broad. Bindicap Comster argued that the definition is appropriate. In the Commission's judgment, the Reporting Rules have been narrowly tailored to obtain the information reasonably necessary from clearing organizations, clearing members and swap dealers in order to implement and conduct an effective initial surveillance program for swaps.

With regard to the proposed definition of ''paired swaps,'' the Working Group argued that it would not always appropriately capture the concept of economic equivalence because, for example, different delivery locations may have periods of high correlation followed by periods where such correlations break down. Better Markets argued that it was too narrow because it did not consider criteria such as market hedging practices, margin netting offered by clearing organizations or historical price correlation. The proposed regulations identified three categories of swaps that would be economically equivalent to DCM contracts and thereby subject to reporting under the proposed rules: (1) Swaps directly or indirectly linked to the price of a referenced DCM contract; (2) swaps directly or indirectly linked to the price of the same commodity for delivery at the same location as that of a referenced DCM contract; and (3) swaps based on the same commodity as that of a referenced DCM contract which are deliverable at different locations that nonetheless have the same supply and demand fundamentals as the referenced DCM contract's delivery point. The first two categories of the definition of economically equivalent swaps are appropriately tailored and objectively defined, do not require case by case Commission analysis, and would provide sufficient data for the Commission to meet its responsibility under sections 4a and 4t of the Act. To further the objectives of clear applicability of the regulations and the submission of accurate reports, as well as to lower the burden on reporting entities by limiting the set of reportable swaps, the Commission has amended the definition to remove the third category.

With regard to the reporting mechanics and data fields of the proposed regulations, Better Markets suggested additional reporting fields, arguing that reporting entities should be required to specify their role with respect to the execution of reported trades and that clearing organizations should be required to report net position information as well as gross positions and delta values. The Commission has determined that the data fields specified in the regulations will provide the Commission with sufficient data to begin its initial surveillance of the swaps markets for physical commodities, while minimizing the burden on reporting entities. Such identification data, including trader categorization, will be collected in 102S and 40S filings which include other trader identifying information and are submitted to the Commission much less frequently than positional data. The Commission can later broaden the scope of the reporting requirements or frequency of reporting identifying data if necessary based on its administrative experience.

The final Reporting Rules do, however, harmonize the data fields required to be reported by swap dealers for cleared and non-cleared swaptions. As proposed, certain fields were required for cleared swaptions that were not required for non-cleared swaptions and vice-versa. Although certain data fields may be more relevant for cleared or non-cleared swaptions, the harmonization of required data fields will simplify the reporting of swaptions and thereby will likely decrease (and not increase) any burden associated with reporting swaptions under the Reporting Rules as finalized.

FIA argued that reporting entities' trade capture systems are not readily adaptable to the data fields specified in the proposed regulations. It also argued that data for cleared swaps should only be submitted by clearing members in order to prevent double counting. The reporting of cleared positions by swap dealers and clearing members was intentionally incorporated into the regulations. As with the collection of any data, there is a need to verify submitted information.

FIA also argued that reporting entities, because certain counterparty data may not be available to them or organized as described by the Reporting Rules, should only be required to report their positions and the names of counterparties, not all the specified data related to consolidated accounts in the proposed regulations.

The Commission has amended the proposed regulations, which initially required a reporting entity to identify information about the controller of a reportable account, to partially address this concern by requiring that data be provided by a clearing member's or swap dealer's direct legal counterparty. Data is no longer required to be provided by account controller. In addition, the final Reporting Rules do not require reporting by actual swap and swaption accounts. All of these amendments will serve to streamline the reporting process while preserving the Commission's regulatory interests.

With regard to the reporting threshold of futures equivalent contracts for economically equivalent swaps, Better Markets suggested that the threshold reporting level should be 25 contracts instead of the 50-contract threshold specified in the proposed regulations. Bindicap Comster stated that the threshold reporting level of 50 contracts is generally suitable while the FIA stated that the threshold reporting level for a particular swap should depend upon its liquidity.

The Commission determined the 50-contract threshold for reporting based on industry inquiries regarding a reporting level that would make 95% of the economically equivalent swaps markets visible to the Commission. In order to streamline reporting and give reporting entities the option of avoiding a complex reporting level calculation, however, the final Reporting Rules allow reporting entities to deem a reporting level of one or more swaps to be a reportable position. Thus the final Reporting Rules allow reporting entities the option of not conducting any potentially complex or costly reporting threshold analysis prior to transmitting reports to the Commission.

The Commission is aware that a reporting level of one contract could potentially expand the Reporting Rules' books and records obligations to additional swap market participants. Therefore, final regulation 20.6 applies a books and records requirement to swap counterparties only if such persons' swaps positions meet or exceed a simplified 50 futures contract equivalent reporting level. Also, final regulation 20.6 provides that persons with swaps positions meeting or exceeding the aforementioned threshold may keep and reproduce books and records for transactions resulting in such swaps positions in the record retention format that such person has developed in the normal course of business. Regulation 20.6 also provides

that such persons may keep and reproduce books and records for, among other things, the cash commodity underlying such swaps positions in accordance with the record retention format developed in the normal course of business.

In connection with the submission of swaps position data, FIA expressed concern about the confidential treatment of data submitted should the Commission determine to require the submission of data to third parties. This concern is not relevant as the regulations only involve the submission of position and identifying data to the Commission. The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

FIA and the Working Group argued that the costs placed by the proposed regulations would be significant and that the Commission significantly underestimated the costs to clearing members and swap dealers. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars, while acknowledging that it is difficult to estimate costs with any precision. The Working Group stated that some of its members estimate the total compliance costs to range up to $80,000 to $750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as $1.5 million. The Commission has carefully considered the costs on market participants. In response, the Commission notes that the Reporting Rules are tailored to collect routine reports only from clearing organizations, clearing members, and swap dealers. Based on discussions with potential reporting entities, the Commission has determined that the costs that would be imposed by the regulations on reporting entities is reasonable given the trade capture and information technology resources of such entities and their familiarity with limiting and managing complex price risks. Clearing organizations and clearing members should have appropriate systems in place and currently likely provide or collect market and large trader reports.

The compliance date for swap dealers that are not clearing members will be delayed until the Commission further defines the term swap dealer. In order to address concerns relating to the ability of reporting entities to comply with the requirements of part 20 by the compliance date set forth in final regulation 20.10(a), final regulation 20.10(c) authorizes the Commission (or staff members delegated with such authority) to permit, for a period not to exceed six calendar months following the effective date of the Reporting Rules, the submission of reports that differ in content, form, or manner from that mandated in part 20, provided that there is a good faith attempt at compliance with part 20.

In addition, in order to address the possibility of certain firms that may not be able to comply expediently with the requirements of part 20 should they fall within the definition of swap dealer, regulation 20.10(e) allows the Commission to defer compliance for such firms for a period not to exceed six calendar months following the effective date of final regulations further defining the term swap dealer. The Commission's consideration of costs and burdens is discussed in more detail below.

The Electric End User Coalition also argued that the recordkeeping burden imposed by the proposed regulations on commercial entities would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically the Federal Energy Regulatory Commission (''FERC''), with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements for end-users with swaps positions that meet or exceed the relevant thresholds are consistent with requirements under current Commission regulation 18.05. As described above, final regulation 20.6 generally permits such end-users to keep and reproduce records of swaps positions, as well as the underlying cash commodities, in the record retention format that such entities have developed in the normal course of business.

II. The Final Reporting Rules

A. Covered Contracts

With regard to the ''swap'' definition, the final part 20 regulations utilize a definition of ''swap '' that is based on the reference to ''commodity swaps'' within the definition of ''swap agreement'' in part 35 of the Commission's regulations.[10] Swap market participants have relied on the definition of ''swap agreement'' for exempting transactions from the CEA since 1993. As a result, market participants have an understanding of the general nature of the definition of commodity swaps. The part 35 definition will become effective on the effective date of this final rulemaking and will operate until the effective date of any swap definitional rulemaking by the Commission under section 1a of the CEA. Under both definitions, the category of the swaps that would be subject to the Reporting Rules remains the same.[11] For further clarity, forwards as currently excluded from the CEA (*i.e.,* prior to the effective date of the Dodd-Frank Act) are also outside the scope of the definition of ''swap'' as used in this reporting scheme.

Regulation 20.2 lists the 46 DCM-listed futures contracts covered by the Reporting Rules (''Covered Futures Contracts''), as well as an additional line item for diversified commodity indices.[12] The Commission, through the definition of paired swap or paired swaption (for ease of reference, collectively ''paired swaps'') in regulation 20.1, defines a subset of swaps as economically equivalent to the Covered Futures Contracts. The definition of paired swaps (*i.e.,* economically equivalent swaps) identifies two distinct categories of instruments.

First, the definition includes those paired swaps that are directly or indirectly linked to the price of a Covered Futures Contract. This category includes swaps that are partially or fully settled or priced at a differential to a Covered Futures Contract. The following are examples of these types of paired swaps:

1. *Directly linked to a listed contract*—A swap settled to the price of the New York Mercantile Exchange (''NYMEX'') Heating Oil Calendar Swap Futures Contract is directly linked to a Covered Futures Contract because the floating price of the futures contract is equal to the monthly average settlement price

[10] 17 CFR 35.1(b)(1).

[11] This definition of ''swap'' is also intended to be generally consistent with how swaps are defined in the Commission's Policy Statement Concerning Swap Transactions, 54 FR 30694, July 21, 1989. That is, a ''swap'' as used in this rulemaking refers to an agreement between two parties to exchange one or more cash flows measured by different rates or prices with payments calculated by reference to a principle base (notional amount).

[12] For the purpose of reporting in futures equivalents, paired swaps and swaptions using commodity reference prices that are commonly known diversified indices with publicly available weightings may be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year.

of the first nearby contract month for the NYMEX New York Harbor No. 2 Heating Oil Futures Contract.

2. *Indirectly linked to a listed contract*—The ICE WTI Average Price Option is indirectly linked to a Covered Futures Contract because the floating price of the swap references the ICE WTI 1st Line Swap Contract which in turn is equal to the monthly average settlement price of the NYMEX Front Month WTI Crude Futures Contract.

3. *Partially settled to a listed contract*—A swap settled to the Argus Sour Crude Index (''ASCI'') (which also underlies the Chicago Mercantile Exchange (''CME'') Argus WTI Formula Basis Calendar Month Swap Futures Contract) is partially settled to a Covered Futures Contract.[13] Because the ASCI index uses both a physical cash market component and the NYMEX WTI Futures Contract to establish the level of the index, it would partially settle to a Covered Futures Contract and would be a paired swap under the first paragraph of the definition.[14]

4. *Priced at a differential to a listed contract*—The ICE Henry Physical Basis LD1 Contract is priced at a differential to a Covered Futures Contract because the settlement price is the final settlement price for natural gas futures (a Covered Futures Contract) as reported by NYMEX for the specified month plus the contract price.

The second category of swaps captured by the paired swap definition includes swaps that directly or indirectly link to, including being partially or fully settled or priced at a differential to, the price of the same commodity for delivery at the same location or locations as that of a Covered Futures Contract. As opposed to the first category of paired swaps, the second category looks to a swap's connection to the commodity underlying a Covered Futures Contract, and to the delivery locations specified in a Covered Futures Contract, as opposed to the price of the contract itself. Therefore, the linkage for contracts in this second category is to the price of the underlying commodity and its physical marketing channels.

As proposed, a paired swap would have also included swaps that are based on the same commodity[15] as that of a Covered Futures Contract but deliverable at locations that are different than a Covered Futures Contract's delivery locations, so long as such locations have substantially the same supply and demand fundamentals as that of a Covered Futures Contract reference delivery location. In response to comments, the Commission has determined not to include this proposed category in the final definition of paired swaps. The final definition thereby narrows the scope of the swaps that are subject to position reporting.

B. Reporting Under the Final Regulations

1. Clearing Organizations

Regulation 20.3 requires paired swap reports from clearing organizations. Clearing organizations are defined in regulation 20.1 as persons or organizations that act as a medium between clearing members for the purpose of clearing swaps or effecting settlements of swaps or swaptions. The definition is adopted as proposed and is modeled after the definition used in current Commission regulation 15.00 (the definitional section for the Commission's large trader reporting rules) solely for the purposes of reporting under part 20. The definition is intended to cover entities that qualify as clearing organizations, regardless of their registration status with the Commission, should for example there exist a mutual recognition regime. It is not meant to apply to financial institutions or parties to swaps that provide counterparties with financing, credit support, or hold collateral to facilitate or to ensure that payments are made under the terms of a paired swap.

Pursuant to regulation 20.3, clearing organizations, for paired swap positions, are required to report the aggregate proprietary and aggregate customer accounts of each clearing member of that clearing organization. Regulation 20.1 defines clearing member as any person who is a member of, or enjoys the privilege of clearing trades in its own name through, a clearing organization. The paired swap positions must be reported to the Commission as futures equivalent positions in terms of a swap's related Covered Futures Contract. Appendix A to this part provides several examples of the methods used for converting swap positions into futures equivalent positions. The regulations call for reporting in futures equivalents because such conversions are made by entities that deal in swaps to effectively manage residual price risks by entering into Covered Futures Contracts. Reporting in futures equivalents provides a measure of equivalency between positions in paired swaps and their related Covered Futures Contracts, which allows for more effective market surveillance and the monitoring of trading across futures and swaps.

As required under paragraphs (a) and (b) of regulation 20.3, each clearing organization is required to submit to the Commission a data record that identifies either gross long and gross short futures equivalent positions if the data record corresponds to a paired swap position, or gross long and gross short futures equivalent positions on a non-delta-adjusted basis if the data record corresponds to a paired swaption position. A data record (for the purposes of this rulemaking) can be thought of as a grouped subset of data elements that communicates a unique (non-repetitive) positional message to the Commission.

Clearing organizations are required to report a data record for each clearing member for each reporting day, which is defined in regulation 20.1 as the daily period of time between a clearing organization or reporting entity's usual and customary last internal valuation of paired swaps and the next such period. In order to provide clearing organizations with some flexibility in determining daily operational cycles that would coincide with their obligation to provide clearing member reports on a daily basis, the proposed definition would permit such cycles of time to vary for different clearing organizations, so long as the daily period of time is consistently observed and the Commission is notified, upon its request, of the manner by which a cycle is calculated. Data records would be reported electronically in a manner consistent with current Commission practice.

The positional data elements in paragraphs (a) and (b) of regulation 20.3 require daily reports for each aggregated proprietary account and each aggregated customer account, by each cleared product, and by each futures equivalent month. Each data record would indicate the commodity reference price with which each cleared product is associated. As defined in regulation 20.1, a commodity reference price is the price series used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of that swap or swaption. In addition, data records for swaptions are required to be broken down further by expiration date, put or call indicator, and strike price. Appendix B to part 20 includes examples of data records that would be required of clearing organizations.

In addition to reports for clearing members, clearing organizations are, pursuant to regulation 20.3(c), required to provide to the Commission, for each

[13] The floating price of the CME futures contract is equal to the arithmetic average of the ASCI (1st month) outright price from Argus Media for each business day that the ASCI is determined during the contract month.

[14] For a description of the ASCI methodology, *see, e.g., http://web04.us.argusmedia.com/ArgusStaticContent//Meth/ASCI.pdf.*

[15] A commodity is considered to be the same (for the purposes of reporting under these regulations) if such commodity has the same economic characteristics with respect to grade and quality specifications as those referenced by a Covered Futures Contract.

futures equivalent month, end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price. This second daily report will allow the Commission to assign an appropriate weight to unadjusted positions.

2. Reporting Entities

Regulation 20.4 requires reporting entities to report principal [16] and direct legal counterparty paired swap positions to the Commission when such positions become reportable. Reporting entities are required to follow the same procedure for determining if their principal or counterparty positions are reportable to the Commission. Regulation 20.1 identifies a reporting entity as a clearing member or a swap dealer as defined in section 1a of the CEA and as subject to definitional changes that will be made through Commission regulations further defining the term swap dealer. The compliance date of any provisions relating to swap dealers will be the effective date of a final swap dealer definition.[17]

Regulation 20.4 requires reporting entities to provide positional reports when reporting entities have principal and counterparty reportable paired swap positions. The final Reporting Rules amend regulation 20.1 to define a reportable position in two distinct ways. First, regulation 20.1, as proposed and finalized, defines a reportable position as a position, in any one futures equivalent month, comprised of 50 or more futures equivalent paired swaps or swaptions based on the same commodity. This proposed level is calibrated to capture data on a sufficiently large percentage of paired swap positions and was arrived at after consultation with multiple market participants.[18] Once a paired swap position attributable to the reporting entity as principal or to its counterparty meets or exceeds the 50 futures equivalent contract threshold, all other paired swaps in the same commodity attributable to such trader becomes part of that trader's reportable position.[19]

Alternatively the Reporting Rules, as amended and finalized, allow reporting entities to identify a reportable position as all positions on a gross basis in a consolidated account (as described in regulation 20.4(a)) that are based on the same commodity, so long as this approach is consistently applied to all consolidated accounts for reporting purposes. This amended definition of a reportable position allows reporting entities to forgo the 50-contract threshold calculation, which may be complex or costly, prior to submitting reports to the Commission.

As with reports that are required to be provided by clearing organizations to the Commission under regulation 20.3, regulation 20.4 requires paired swap positions to be represented and reported in futures equivalents. A common method of accounting for positions in swaps and futures allows for more effective market surveillance. The data collected by the Reporting Rules could be used to determine aggregate open interest levels for economically equivalent derivatives. For example, such ''size-of-the-market'' calculations could in turn serve as a basis for computing non-spot-month position limits, should the Commission determine to adopt such limits.

Under final regulation 20.11, for the purpose of reporting in futures equivalents, paired swaps and swaptions that are based on commonly known diversified indices with publicly available weightings must be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year. Bespoke indices, however, must be decomposed into their futures equivalent components and reported along with a commodity reference price which allows the Commission to match such components to the bespoke index. The term commodity reference price is defined in regulation 20.1 as the price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of such contracts.

To determine what to report under regulation 20.4, reporting entities are required to separately consider principal and counterparty positions on a gross basis. Reporting entities are required to provide for each reporting day a data record that either identifies long and short paired swap positions (if the record pertains to swap positions) or long and short non-delta-adjusted paired swaption positions and long and short delta-adjusted swaption positions (if the record pertains to swaptions positions). For uncleared paired swaps, the regulations require a reporting entity to use economically reasonable and analytically supported deltas.

More specifically, regulation 20.4, as proposed and finalized, requires that this information be grouped separately by principal or counterparty positions, by futures equivalent month, by cleared or uncleared contracts, by commodity reference price, and by clearing organization if the data record pertains to cleared swaps. Data records pertaining to swaption positions under the final regulations are to be further grouped by put or call, expiration date, and strike price. The reports provided under regulation 20.4 are required to also include identifiers for the commodity underlying the reportable position, the counterparties of the account and the 102S filing identifier, as described in more detail below, assigned by the reporting entity to its counterparty.

3. Series S Filings

Regulation 20.5(a) requires a 102S filing for the identification of a reporting entity's counterparty when such counterparty holds a reportable position. The 102S filing consists of the ''name, address, and contact information of the counterparty with the reportable account'' and a ''brief description of the nature of such person's paired swaps and swaptions' market activity.'' The reporting entity is required to submit a 102S filing only once for each person associated with a reportable account unless prior filed information is no longer accurate.

Once an account counterparty is reportable, the Commission may contact the trader directly and require that the trader file a more detailed identification report, a 40S filing. The Commission would require a 40S filing if a trader has become reportable for the first time and is not known to the Commission. A 40S filing consists of the submission of a CFTC Form 40 ''Statement of Reporting Trader.'' As the current version of Form 40 covers information on positions in futures and options, traders would be required to complete the form as if the form covered information related to positions in paired swaps and swaptions.

The 102S filing and the 40S filing together would allow the Commission to identify the person(s) owning or controlling the trading of a reportable account, the person to contact regarding

[16] The Reporting Rules, as proposed, used the term proprietary to refer to principal positions in the context of reporting by clearing members and swap dealers.

[17] The Reporting Rules render a swap dealer in any paired swap to be a reporting entity with the responsibility to provide data on all reportable positions, regardless of the specific types of paired swaps that render the entity a statutory swap dealer under the CEA.

[18] *See http://comments.cftc.gov/PublicComments/CommentList.aspx?id=889.*

[19] In order to verify that a reporting entity's paired swap positions are no longer above the threshold, the proposed definition of reportable position would also encompass positions in paired swaps held by the reporting entity on the first day after which the reporting entity's paired swap positions are no longer reportable.

trading, the nature of the trading, whether the reportable account is related—by financial interest or control—to another account, and the principal occupation or business of the account owner. The filings also would provide the Commission information on whether the account is being used for hedging cash market exposure.

Commission staff would use the information in these two filings to determine if the reported account corresponds to a new trader or is an additional account of an existing trader. If the account is an additional one of an existing trader, it would then be aggregated with that of other related accounts currently being reported.

The Commission plans to update, streamline and make electronic its current Form 102 and Form 40 in the near term. The Commission intends for such revised forms to include sections specifically for swap and swaptions. When updated, regulation 20.5 will be amended to reflect these revisions and to require reports electronically through updated Forms 102 and 40.

4. Maintenance of Books and Records

Regulation 20.6 imposes recordkeeping requirements on clearing organizations, reporting entities, and persons with positions in paired swaps above a certain futures equivalent threshold. Regulations 20.6(a) and 20.6(b) require clearing organizations and reporting entities, respectively, to keep records of transactions in paired swaps or swaptions as well as methods used to convert paired swaps or swaptions into futures equivalents. In addition, regulation 20.6(c) requires every person with greater than 50 all-months-combined futures equivalent positions on a gross basis in paired swaps or swaptions on the same commodity to keep books and records for transactions resulting in such swaps positions and, among other things, the cash commodity underlying such positions. In general, such person may keep and reproduce such books and records in the record retention format that such person has developed in the normal course of business. Furthermore, in order to clarify the Commission's authority to issue special calls for books and records, the Commission is including an explicit special call provision with respect to reportable positions in regulation 20.6(d).

The recordkeeping duties imposed by regulations 20.6(a) and 20.6(b) are in accordance with the requirements of regulation 1.31. Regulation 1.31(a)(1) requires that these transaction records be kept for five years, the first two of which they ''shall be readily accessible.'' Such books and records ''shall be open to inspection by any representative of the Commission.''

These recordkeeping requirements allow the Commission to have ready access to records that would enable Commission staff to reconstruct the transaction history of reported positions. These requirements would ensure that data records submitted to the Commission could be audited. In addition, these records enable Commission staff to better reconstruct trading activity that may have had a material impact on the price discovery process.

The recordkeeping burden imposed by regulation 20.6 is not anticipated to be unduly significant. These requirements are not unlike the recordkeeping requirements imposed by Congress in new CEA section 4r(c)(2) on all swap market participants, and by the Commission on those entities with reportable futures accounts under the existing recordkeeping provision of regulation 18.05.

5. Form and Manner of Reporting

Regulation 20.7(a) provides that the Commission would specify, in writing to persons required to report, the format, coding structure, and electronic data transmission procedures for these reports and submissions. The purpose of this provision is to provide notice on how the Commission would determine the means by which the part 20 reports are to be formatted and submitted. The Commission notes that subsequent to the commencement of reporting, and from time to time thereafter, it will provide standardized codes for data elements such as commodity reference prices and require that submitted position reports use such standard codes instead of proprietary codes. Such information will be disseminated on the Commission's Web site.[20]

6. Delegation of Authority

Regulation 20.8, as proposed and finalized, delegates certain of the Commission's part 20 authorities to the Director of the Division of Market Oversight and through the Director to other employee or employees as designated by the Director. The delegated authority extends to: (1) Issuing a special call for a 40S or 102S filing and books and records; (2) providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part; and (3) determining the compliance schedules described in regulation 20.10. The purpose of these delegations is to facilitate the ability of the Commission to respond to changing market and technological conditions for the purpose of ensuring timely and accurate data reporting.

7. Sunset Provision

Regulation 20.9, as proposed and finalized, includes a sunset provision that would render the Reporting Rules ineffective and unenforceable upon the Commission's finding (through the issuance of an order) that operating SDRs are capable of processing positional data in a manner that would enable the Commission to effectively oversee and surveil paired swaps trading and paired swap markets. Regulation 20.9 also states that the Commission may retain the effectiveness and enforceability of any or all requirements in part 20, such as the reporting of deltas for uncleared paired swaps or the reporting of paired swap positions in futures equivalents, should the Commission determine through an order that such reporting is of material value to conducting market surveillance.

8. Compliance Schedule

Under regulation 20.10, the compliance date for reporting requirements for clearing organizations under regulation 20.3 and clearing members under regulation 20.4 is sixty days after the publication of this notice in the **Federal Register**. The compliance date with regulation 20.4 for swap dealers that are not clearing members is the effective date of final regulations defining the term swap dealer.[21] All special call provisions must be complied with sixty days following the date of publication of this notice in the **Federal Register**.

Regulation 20.10 also allows the Commission to permit for a period, not to exceed six calendar months following the effective date of this part, during which a clearing organization or reporting entity or trader may provide reports that differ in content or are submitted in a form and manner which is other than prescribed by the provisions of part 20, provided that the submitter coordinates with the Commission and is making a good faith attempt to comply with all of the provisions of part 20. Furthermore, upon the passage of the full compliance

[20] As section II.(B).(8) herein describes, the Commission anticipates consulting with clearing organizations and reporting entities before determining the format, coding structure, and electronic data transmission procedures referenced in final regulation 20.7.

[21] *See* 75 FR 80174, December 21, 2010.

schedule outlined above, all paired swaps and swaptions position and market reports that are currently reported under a Commission order or parts 15 through 19 and 21 of the Commission's regulations must instead be reported exclusively under part 20.

In order to address the possibility of certain firms that may not be able to comply expediently with the requirements of part 20 should they fall within the definition of swap dealer, regulation 20.10(e) allows the Commission to defer compliance for such firms for a period not to exceed six calendar months following the effective date of final regulations further defining the term swap dealer.

A deferred compliance period of six months is appropriate to reduce potential compliance costs for such reporting entities because they may not have procedures in place for routine reporting of swaps data as they currently are not regulated as financial firms. The deferred compliance period would provide these affected entities with additional time to determine whether they need to make any arrangements to implement the reporting regime, and to make any such arrangements. Once the swap dealer definition is final, a party that is uncertain as to whether or not they are a swap dealer would not be foreclosed from asking CFTC staff or the Commission for additional relief under the CEA or Commission regulations.

The Commission also notes that it expects to consult with clearing organizations and reporting entities with respect to the manner of reporting before determining the format, coding structure, and electronic data transmission procedures that must be used to transmit information to the Commission pursuant to regulation 20.7.

III. Related Matters

A. Cost-Benefit Analysis

1. Introduction

Section 15(a) of the Act requires that the Commission, before promulgating a regulation under the Act or issuing an order, consider the costs and benefits of its action. By its terms, CEA section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or determine whether the benefits of the regulation outweigh its costs. Rather, CEA section 15(a) requires the Commission to ''consider the costs and benefits'' of its action.

CEA section 15(a) specifies that costs and benefits shall be evaluated in light of the following considerations: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. Accordingly, the Commission could, in its discretion, give greater weight to any of the five considerations and could, in its discretion, determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

2. Costs

As mentioned above, under CEA section 4a(a)(2), the Commission has been directed to establish position limits for exempt and agricultural commodities, as appropriate. Section 4t of the Act authorizes the Commission to establish a large trader reporting system for significant price discovery function swaps, of which economically equivalent swaps are a subset. As discussed in more detail above, swaps position reports are a necessary component of an effective surveillance program, including monitoring compliance with any limits that may be established by the Commission under section 4a of the Act.

Through the public comment process, alternatives to the Reporting Rules were presented to and reviewed by the Commission. Some commenters indicated that their respective alternatives would provide the Commission with the data it needs and would be less burdensome than the Reporting Rules. Bindicap Comster, the FIA, and the Working Group opposed the proposed regulations, and suggested an expanded special call reporting mechanism would be a better alternative. The Commission's current Index Investment Data Reports special call is a targeted collection of data. It gathers information related to specific products from a limited set of market participants. The special call was not intended to function as a tool for general market surveillance. In order to be able to gather positional data of the quality needed to conduct market surveillance, the special call would have to undergo substantial modifications which in effect would convert it into the Reporting Rules. In light of the broad areas of cost and benefit evaluation specified by CEA section 15(a), in particular section 15(a)(2)(B), the Commission has determined that the alternative presented by Bindicap Comster, FIA, and the Working Group is less viable than the Reporting Rules and would not reduce costs to persons subject to this part or provide additional benefits.

With regard to the future establishment of SDRs and whether the Commission should wait for SDRs to provide swaps position data instead of adopting the regulations, ATA argued that the Commission should proceed with the regulations and not wait for SDRs to become operational. FIA and the Working Group, meanwhile, argued that the future role of SDRs makes adoption of the regulations unnecessary. The Commission has determined that the Reporting Rules are necessary for several reasons. It is likely that physical commodity SDRs will require the most time to become operational since, unlike for swaps in the interest rate, equity and credit default asset categories, there currently is no functional and accepted data repository for energy, metal and agricultural commodities. In addition, even after SDRs have been established, because they are fundamentally transaction repositories, it may be a considerable amount of time before SDRs are able to reliably convert transaction data into positional data. Thus, in view of the considerable time before physical commodity swap SDRs are likely to be operational and have the ability to convert transactions to positions, the Commission has determined to adopt the Reporting Rules instead of the proposed alternative, consistent with the objectives outlined in CEA section 15(a)(2). Without a comprehensive and operational market surveillance system in the near term, the Commission would not be able to administer the CEA as amended by the Dodd-Frank Act.

The Electric End User Coalition also argued that the recordkeeping burden imposed by the proposed regulations would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically FERC, with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements of the regulations are not unduly burdensome and are consistent with the recordkeeping requirements of current Commission regulations 1.31 and 18.05. In addition, as the regulations have been narrowly tailored to collect routine data only from clearing organizations, clearing members and swap dealers, the Reporting Rules will not have a significant negative impact on a substantial number of end-users. The Commission has thus determined to proceed with the Reporting Rules.

In developing the Reporting Rules, the Commission has aimed to minimize the cost and burden associated with reporting positional data to the Commission. As discussed above, the Commission has tailored the Reporting Rules to conform to the market structure for cleared and uncleared paired swaps. The cost of the part 20 regulations will be borne by firms that are clearing organizations reporting under regulation 20.3 and reporting entities reporting under regulation 20.4. For such firms, the additional cost to implement a reporting system is expected to be reasonable since the Commission understands these firms track their counterparties' positions for risk management purposes.

Although the Reporting Rules establish a reporting system for cleared paired swaps that resembles the large trader reporting system, they establish a structurally different reporting system for uncleared paired swaps. The structure of the uncleared paired swaps market is not as centralized as the cleared paired swaps market: there is no central counterparty that corresponds to a clearing organization in the uncleared paired swaps market. The Commission believes that swap dealers may be counterparties to a significant portion of the market for uncleared paired swaps and swaptions.

Accordingly, the Reporting Rules require position reporting from swap dealers. These firms are to report their reportable positions as well as those of their counterparties. As is the case for clearing member reporting entities, it is likely that creating or purchasing an information technology system that can present such a firm's net position exposures on a daily basis will not be an overly burdensome marginal expense, since the Commission understands swap dealers track their exposures for risk management purposes.

For counterparties that will be subject to the recordkeeping requirements of regulation 20.6, it should be noted that these requirements will place new burdens (in terms of reporting and retaining information on cash market transactions) only on persons that are reportable solely in paired swaps. This is because Congress, in new CEA section 4r(c)(2), has extended recordkeeping requirements to all swaps irrespective of any reporting requirement. Likewise, counterparties that hold reportable futures positions (in addition to reportable paired swaps positions) are currently subject to existing recordkeeping requirements under regulation 18.05. Thus, the Commission believes that these additional burdens, in marginal terms, are not expected to be overly burdensome, given that firms collect information on their commercial activities in the normal course of business operations. The Commission also notes its adoption of regulation 20.10, which staggers implementation of the Reporting Rules. The flexible implementation process should reduce compliance costs in general.

As described in detail below, the Commission held several meetings with potential reporting entities and conducted analysis to estimate the reporting and recordkeeping burdens imposed by the Reporting Rules annually for the next five years. For clearing organizations, the reporting burden is estimated to be approximately 950 hours and $100,000 spread across 5 entities, or 190 hours and $20,000 per entity. The recordkeeping burden for clearing organizations is estimated to be 100 hours and $100,000 spread across 5 entities, or 20 hours and $20,000 per entity. Each clearing organization, then, is estimated to have a total annual burden of 207 hours and $40,000.

For clearing members, the reporting burden is estimated to be 25,000 hours and $6,000,000 spread across 100 entities (80 swap dealers and 20 non-swap dealers), or 250 hours and $60,000 per entity. The recordkeeping burden for clearing members is estimated to be 2,000 hours and $2,000,000 spread across 100 entities, or 20 hours and $20,000 per entity. In addition, clearing members have a burden in connection with 102S submissions. The burden for 102S submissions is estimated to be 1,800 hours and $1,000,000 spread across 200 entities (of which 100 are clearing members), or 9 hours and $5,000 per entity. Each clearing member, then, is estimated to have a total annual burden of 279 hours and $85,000.

For non-clearing member swap dealers, the reporting burden is estimated to be 37,500 hours and $8,000,000 spread across 100 entities, or 375 hours and $80,000 per entity. The recordkeeping burden for non-clearing member swap dealers is estimated to be 2,000 hours and $2,000,000 spread across 100 entities, or 20 hours and $20,000 per entity. In addition, non-clearing member swap dealers have a burden in connection with 102S submissions. The burden for 102S submissions is estimated to be 1,800 hours and $1,000,000 spread across 200 entities (of which 100 are non-clearing member swap dealers), or 9 hours and $5,000 per entity. Each non-clearing member swap dealer, then, is estimated to have a total annual burden of 404 hours and $105,000.

For persons with reportable positions, the reporting burden in connection with 40S submissions is estimated to be 165 hours and $4,500,000 spread across 500 entities, or .33 hours and $9,000 per entity. The recordkeeping burden for persons with reportable positions is estimated to be 10,000 hours and $11,500,000 spread across 500 entities, or 20 hours and $23,000 per entity. Each person with reportable positions, then, is estimated to have a total annual burden of 20.33 hours and $32,000.

Two commenters to the proposing release, FIA and the Working Group, argued that the Commission underestimated the costs imposed by the Reporting Rules. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars. The Working Group stated that some of its members estimate the total compliance costs to range up to $80,000 to $750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as $1.5 million. In light of these comments, the Commission has carefully reviewed its analysis and estimates, and it has determined its estimates to be reasonable and satisfactory in accordance with CEA section 15(a)(2) for the purpose of cost-benefit analysis of the Reporting Rules.

3. Benefits

In addition to providing increased market transparency through the reporting of paired swap positions to the Commission, the Commission will be better able to first, protect market participants and the public (CEA section 15(a)(2)(A)) and second, increase the efficiency and competitiveness of the markets (CEA section 15(a)(2)(B)). The extension of the Commission's surveillance activities to these paired swap markets will enhance the deterrence and detection of problematic activities and, thus, help ensure the integrity of these markets and protect market participants and the public from disruptive trading, price manipulation, and the effects of market congestion. Further, with this extension, the Commission will be able to expand its Commitments of Traders Reports, for example, to include aggregate position data on the paired swaps markets, and thus will provide the public, including market participants, greater transparency into the constitution of markets covered by part 20. This increased transparency may reduce the informational asymmetries in the paired swap markets and thereby improve the efficiency of the market and promote competition.

As discussed above, implementing part 20 will enable the Commission to monitor and enforce position limits, if established by the Commission, to diminish, eliminate, or prevent excessive speculation; to deter and prevent market manipulation; ensure sufficient market liquidity for *bona fide* hedgers; and to ensure that the price discovery function of the underlying market is not disrupted. By enabling the Commission to monitor compliance with position limits, if established by the Commission, to address these concerns, the Commission would be better able to protect the price discovery process (CEA section 15(a)(2)(C)) and market participants and the public from the threats of excessive speculation and price manipulation (CEA section 15(a)(2)(A)).

4. Conclusion

The Commission, after considering the CEA section 15(a) factors, finds that the Reporting Rules are reasonably necessary and appropriate to protect the public interest and effectuate and accomplish purposes and goals of the CEA. The Commission also finds that the expected incremental cost imposed by part 20 is outweighed by the expected benefit. Accordingly, the Commission has determined to adopt the Reporting Rules.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires Federal agencies, in proposing regulations, to consider the impact of those regulations on ''small entities.'' [22] In response to the Reporting Rules, the Electric End User Coalition argued that the recordkeeping burden imposed by the proposed regulations would be significant. In particular it argued that the recordkeeping requirements should not apply to end-users and that the Commission should defer to other regulators, specifically FERC, with regard to recordkeeping obligations. In the Commission's judgment, the recordkeeping requirements of the regulations are consistent with the recordkeeping requirements of current Commission regulations 1.31 and 18.05. In addition, as the regulations have been narrowly tailored to collect routine data only from clearing organizations, clearing members and swap dealers, the Commission has determined that the Commission does not expect the Reporting Rules to have a significant impact on a substantial number of small entities. The Commission has thus determined to proceed with the Reporting Rules.

The Reporting Rules will affect organizations including registered derivatives clearing organization (''DCOs''), clearing members (many of whom are registered with the Commission already as futures commission merchants (''FCMs'')), swap dealers, and persons who have books and records obligations under regulation 20.6.

The Commission has previously determined that DCOs [23] and FCMs [24] are not ''small entities'' for purposes of the RFA. As noted above, a person with non-discretionary reporting or books and records obligations under final regulations 20.3, 20.4 and 20.6 will either be a clearing organization, clearing member, swap dealer, or a person with at least 50 or more gross paired swaps positions in the same commodity on a futures equivalent and all-months-combined basis. The Commission notes this threshold is comparable to the minimum 25-contract reporting levels in effect for futures positions under regulation 15.03. Previously, the Commission had determined that the reporting levels in regulation 15.03, which determine which positions are reportable, would not affect small entities.[25] The Commission does not believe that entities who meet the Reporting Rules' non-discretionary quantitative threshold will constitute small entities for RFA purposes.

Accordingly, the Commission does not expect the Reporting Rules to have a significant impact on a substantial number of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the Reporting Rules will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

1. Overview

The Paperwork Reduction Act (''PRA'') [26] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. The Reporting Rules will result in new collection of information requirements within the meaning of the PRA. The Commission submitted the proposing release to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve, and assign a new control number for, the collections of information covered by the proposing release. The information collection burdens created by the Commission's proposed rules, which were discussed in detail in the proposing release, are identical to the collective information collection burdens of the final rules.

The Commission invited the public and other Federal agencies to comment on any aspect of the information collection requirements discussed above. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicited comments in order to: (i) Evaluate whether the proposed collections of information were necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The Commission received two comments on the burden estimates and information collection requirements contained in its proposing release. FIA and the Working Group argued that the costs placed by the proposed regulations would be significant and that the Commission significantly underestimated the costs to clearing members and swap dealers. FIA stated that some of its members believe the costs to be very substantial and in some cases exceeding millions of dollars, while acknowledging that it is difficult to estimate costs with any precision. The Working Group stated that some of its members estimate the total compliance costs to range up to $80,000 to $750,000 per year, inclusive of capital costs, and that the upfront costs could be as high as $1.5 million. The Commission has carefully considered the costs on market participants. Some comments regarding significant industry burdens assumed that a substantial number of end-users would be swept up into the definition of swap dealer. In response, the Commission notes that the Reporting Rules are tailored to collect routine reports only from clearing

[22] 5 U.S.C. 601 *et seq.*

[23] 66 FR 45604, 45609, August 29, 2001.

[24] Policy Statement and Establishment of Definitions of ''Small Entities'' for Purposes of the Regulatory Flexibility Act, 47 FR 18618, 18619, April 30, 1982.

[25] *Id.* at 18620 (excluding large traders from the definition of small entity).

[26] 44 U.S.C. 3501 *et seq.*

organizations, clearing members, and swap dealers. In addition, based on numerous meetings with potential reporting entities, the Commission has determined that the costs that would be imposed by the proposed regulations on reporting entities is reasonable given the trade capture and information technology resources of such entities.

The title for this collection of information is ''Part 20—Large Trader Reporting for Physical Commodity Swaps.'' OMB has approved assigned OMB control number 3038–[_] to this collection of information.

2. Information Provided and Recordkeeping Duties

Part 20 establishes reporting requirements for clearing organizations and reporting entities and recordkeeping requirements for these firms in addition to firms that become reportable because of a reportable paired swap or swaption positions. Accordingly, the Commission is seeking a new and separate control number for reporting from clearing organizations and reporting entities (collectively ''respondents'') and recordkeeping for firms that become reportable because of a reportable paired swap or swaption position operating in compliance with the requirements of part 20.

Part 20 will result in the collection of information on ''paired swaps and swaptions'' positions as defined in regulation 20.1. Specifically, part 20 provides for three new kinds of reports:

1. Under regulation 20.3, swap clearing organizations will provide daily reports of relevant position and clearing data.

2. Under regulation 20.4, reporting entities will produce daily position reports on a second-day basis on their own and individual counterparty accounts. There are two categories of reporting entities: (a) Clearing members and (b) swap dealers that are not clearing members. The former category, clearing members, will include many firms that are currently registered as FCMs with the Commission. The Commission estimates that a total of 180 swap dealers transact in physical commodity swaps and thereby may be reporting entities under part 20 (clearing members and non-clearing members combined).

3. Finally, under regulation 20.5, all reporting entities will submit identifying information to the Commission on new reportable accounts through a 102S filing.

In addition to creating these reporting requirements, regulation 20.6 imposes recordkeeping requirements for (1) clearing organizations, (2) reporting entities, and (3) persons with paired swaps positions as specified in regulation 20.6(c). The Commission estimates that the recordkeeping requirements of regulation 20.6 will not be overly burdensome. For the firms subject to the reporting and recordkeeping requirements of regulation 20.6, it should be noted that these requirements are not unlike the recordkeeping requirements imposed by Congress in new CEA section 4r(c)(2) and by existing recordkeeping regulation 18.05. If a firm subject to these recordkeeping requirements was previously reportable due to a futures position in the relevant commodity above the ''reporting level'' (*see* regulation 15.03), then the regulation 20.6(b) recordkeeping burdens would not be new, as that firm would already be subject to these requirements under regulation 18.05. If a firm becomes subject to the regulation 20.6 recordkeeping requirements only because of a reportable paired swaps position (and not because of a futures position above the reportable level), then the requirements contained in the Reporting Rules add only the duty to keep records on all commercial activities that a reporting entity or person hedges to the swaps-related recordkeeping duties imposed by CEA section 4r(c)(2). These additional burdens are not expected to be substantial, given that in the normal course of business firms would collect this information on their commercial activities.

The Commission estimates that implementing part 20 will create a total annual reporting and recordkeeping hour burden of 79,503 hours across 705 firms. Based on a weighted average wage rate of $74.36,[27] this will amount to an annualized labor cost of $5.9 million. In addition, the Commission estimates that total annualized capital/start-up, operating, and maintenance costs[28] will amount to a combined $35.2 million (a typographical error in the proposed Reporting Rules indicated a $32.7 cost). This overall total reporting and recordkeeping hour burden is the sum of estimated burdens for the three reporting categories and the three recordkeeping categories mentioned above.

Reporting burdens:

1. Regulation 20.3 clearing organization reports will account for 938 of these annual reporting and recordkeeping hours. These hours will be spread across 5 respondents. Annualized capital/start-up, operating, and maintenance costs for all affected clearing organizations combined will be approximately $100,000.[29]

2. Regulation 20.4 reporting entity reports will have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity reports will create an annual reporting and recordkeeping burden of 25,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined will be approximately $6 million.

b. Swap dealer non-clearing member reporting entity reports will create an annual reporting and recordkeeping burden of 37,500 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category combined will be approximately $8 million.

3. Regulation 20.5 reporting entity 102S submissions will create an annual reporting and recordkeeping burden of 1,800 hours spread across 200 firms. Annualized capital/start-up, operating, and maintenance costs for all reporting entities combined providing these reports will be approximately $1 million.

4. 40S submissions by persons with reportable positions under regulation 20.5(b) in paired swaps will create an annual reporting and recordkeeping burden of 165 hours and will affect 500 firms. Annualized capital/start-up, operating, and combined maintenance costs for all firms providing 40S filings will be approximately $4.5 million.

Recordkeeping burdens:

1. Regulation 20.6(a) recordkeeping duties for clearing organizations will account for 100 of these annual

[27] The Commission staff's estimates concerning the wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (''SIFMA''). The $74.36 per hour is derived from figures from a weighted average of salaries and bonuses across different professions from the SIFMA Report on Management & Professional Earnings in the Securities Industry 2009, modified to account for an 1,800-hour work year and multiplied by 1.3 to account for overhead and other benefits. The wage rate is a weighted national average of salary and bonuses for professionals with the following titles (and their relative weight): ''programmer (senior)'' (60% weight), ''compliance advisor (intermediate)'' (20%), ''systems analyst'' (10%), and ''assistant/associate general counsel'' (10%).

[28] The capital/start-up cost component of ''annualized capital/start-up, operating, and maintenance costs'' is based on an initial capital/start-up cost that is straight-line depreciated over five years.

[29] All of the capital cost estimates in these estimates are based on a five-year, straight-line depreciation.

reporting and recordkeeping hours. These hours will be spread across 5 firms. Annualized capital/start-up, operating, and maintenance costs to meet the recordkeeping requirements of regulation 20.6(a) will be approximately $100,000.

2. Regulation 20.6(b) reporting entity recordkeeping duties will have two separate burden estimates based on the kind of reporting entity providing the report:

a. Clearing member (80 clearing member/swap dealers plus 20 clearing member/non-swap dealers) reporting entity recordkeeping will create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities will be approximately $2 million.

b. Swap dealer non-clearing member reporting entity recordkeeping will create an annual reporting and recordkeeping burden of 2,000 hours spread across 100 respondents. Annualized capital/start-up, operating, and maintenance costs for all firms in this category of recordkeeping reporting entities will be approximately $2 million.

3. Regulation 20.6(c) recordkeeping duties for persons with paired swaps positions will create an annual reporting and recordkeeping burden of 10,000 hours spread across 500 firms. Annualized capital/start-up, operating, and maintenance costs for all traders in this category combined will be approximately $11.5 million.

3. Confidentiality

The Commission will protect proprietary information according to the Freedom of Information Act and 17 CFR part 145, ''Commission Records and Information.'' In addition, section 8(a)(1) of the Act strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [30] The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

List of Subjects

17 CFR Part 15

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 20

Physical commodity swaps, Swap dealers, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR chapter I as follows:

PART 15—REPORTS—GENERAL PROVISIONS

■ 1. The authority citation for part 15 is revised to read as follows:

Authority: 7 U.S.C. 2, 5, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 7, 7a, 9, 12a, 19, and 21, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

■ 2. Revise the heading and introductory text in § 15.00 to read as follows:

§ 15.00 Definitions of terms used in parts 15 to 19, and 21 of this chapter.

As used in parts 15 to 19, and 21 of this chapter:

* * * * *

■ 3. Add part 20 to read as follows:

PART 20—LARGE TRADER REPORTING FOR PHYSICAL COMMODITY SWAPS

Sec.

20.1 Definitions.
20.2 Covered contracts.
20.3 Clearing organizations.
20.4 Reporting entities.
20.5 Series S filings.
20.6 Maintenance of books and records.
20.7 Form and manner of reporting and submitting information or filings.
20.8 Delegation of authority to the Director of the Division of Market Oversight.
20.9 Sunset provision.
20.10 Compliance schedule.
20.11 Diversified commodity indices.
Appendix A to Part 20—Guidelines on Futures Equivalency
Appendix B to Part 20—Explanatory Guidance on Data Record Layouts

Authority: 7 U.S.C. 1a, 2, 5, 6, 6a, 6c, 6f, 6g, 6t, 12a, 19, as amended by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

§ 20.1 Definitions.

As used in, and solely for the purposes of, this part:

Business day means ''business day'' as that term is defined in § 1.3 of this chapter.

Cleared product means a paired swap or swaption that a clearing organization offers or accepts for clearing.

Clearing member means any person who is a member of, or enjoys the privilege of, clearing trades in its own name through a clearing organization.

Clearing organization means the person or organization that acts as a medium between clearing members for the purpose of clearing swaps or swaptions or effecting settlements of swaps or swaptions.

Closed swap or closed swaption means a swap or swaption that has been settled, exercised, closed out or terminated.

Commodity reference price means the price series (including derivatives contract and cash market prices or price indices) used by the parties to a swap or swaption to determine payments made, exchanged, or accrued under the terms of the contracts.

Counterparty means, from the perspective of one side to a contract, the person that is the direct legal counterparty corresponding to the other side of the contract.

Clearing member customer means any person for whom a reporting entity clears a swap or swaption position.

Futures equivalent means an economically equivalent amount of one or more futures contracts that represents a position or transaction in one or more paired swaps or swaptions consistent with the conversion guidelines in Appendix A of this part.

Open swap or swaption means a swap or swaption that has not been closed.

Paired swap or paired swaption means an open swap or swaption that is:

(1) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of any commodity futures contract listed in § 20.2; or

(2) Directly or indirectly linked, including being partially or fully settled on, or priced at a differential to, the price of the same commodity for delivery at the same location or locations.

Person means any ''person'' as that term is defined in § 1.3 of this chapter.

Reportable account or consolidated account that is reportable means a consolidated account that includes a reportable position.

Reportable position means:

(1)(i) A position, in any one futures equivalent month, comprised of 50 or more futures equivalent paired swaps or swaptions based on the same commodity underlying a futures contract listed in § 20.2, grouped separately by swaps and swaptions, then grouped by gross long contracts on a futures equivalent basis or gross short contracts on a futures equivalent basis;

(ii) For a consolidated account (described in § 20.4(a)) that includes a reportable position as defined in paragraph (1)(i) of this definition, all other positions in that account that are

[30] 7 U.S.C. 12(a)(1).

based on the commodity that renders the account reportable; and

(iii) The first reporting day on which a consolidated account (described in § 20.4(a)) no longer includes a reportable position as described in paragraph (1)(i) of this definition (because on such day, the reporting entity's consolidated account shall continue to be considered and treated as if it in fact included reportable positions as described in paragraph (1)(i) of this definition); or

(2) At the discretion of a reporting entity, and as an alternative to paragraph (1) of this definition, so long as the same method is consistently applied to all consolidated accounts (as described in § 20.4(a)) of the reporting entity, all positions on a gross basis in a consolidated account that are based on the same commodity.

Reporting day means the period of time between a clearing organization or reporting entity's usual and customary last internal valuation of paired swaps or swaptions and the next such period, so long as the period of time is consistently observed on a daily basis and the Commission is notified, upon its request, of the manner by which such period is calculated and any subsequent changes thereto.

Reporting entity means:

(1) A clearing member; or

(2) A swap dealer in one or more paired swaps or swaptions as that term is defined in section 1a of the Act and any Commission definitional regulations adopted thereunder.

Swap means:

(1) Until the effective date of any definitional rulemaking regarding ''swap'' by the Commission under section 1a of the Act, an agreement (including terms and conditions incorporated by reference therein) which is a commodity swap (including any option to enter into such swap) within the meaning of ''swap agreement'' under § 35.1(b)(1) of this chapter, or a master agreement for a commodity swap together with all supplements thereto; or

(2) ''Swap'' as defined in section 1a of the Act and any Commission definitional regulations adopted thereunder, upon the effective date of such regulations.

Swaption means an option to enter into a swap or a swap that is an option.

§ 20.2 Covered contracts.

The futures and option contracts listed by designated contract markets for the purpose of reports filed and information provided under this part are as follows:

COVERED AGRICULTURAL AND EXEMPT FUTURES CONTRACTS

Chicago Board of Trade (''CBOT'') Corn.
CBOT Ethanol.
CBOT Oats.
CBOT Rough Rice.
CBOT Soybean Meal.
CBOT Soybean Oil.
CBOT Soybeans.
CBOT Wheat.
Chicago Mercantile Exchange (''CME'') Butter.
CME Cheese.
CME Dry Whey.
CME Feeder Cattle.
CME Hardwood Pulp.
CME Lean Hogs.
CME Live Cattle.
CME Milk Class III.
CME Non Fat Dry Milk.
CME Random Length Lumber.
CME Softwood Pulp.
COMEX (''CMX'') Copper Grade #1.
CMX Gold.
CMX Silver.
ICE Futures U.S. (''ICUS'') Cocoa.
ICUS Coffee C.
ICUS Cotton No. 2.
ICUS Frozen Concentrated Orange Juice.
ICUS Sugar No. 11.
ICUS Sugar No. 16.
Kansas City Board of Trade (''KCBT'') Wheat.
Minneapolis Grain Exchange (''MGEX'') Wheat.
NYSELiffe (''NYL'') Gold, 100 Troy Oz.
NYL Silver, 5000 Troy Oz.
New York Mercantile Exchange (''NYMEX'') Cocoa.
NYMEX Brent Financial.
NYMEX Central Appalachian Coal.
NYMEX Coffee.
NYMEX Cotton.
NYMEX Crude Oil, Light Sweet.
NYMEX Gasoline Blendstock (RBOB).
NYMEX Hot Rolled Coil Steel.
NYMEX Natural Gas.
NYMEX No. 2 Heating Oil, New York Harbor.
NYMEX Palladium.
NYMEX Platinum.
NYMEX Sugar No. 11.
NYMEX Uranium.
Diversified Commodity Index (See § 20.11).

§ 20.3 Clearing organizations.

(a) *Reporting data records.* For each reporting day, with respect to paired swaps or swaptions, clearing organizations shall report to the Commission, separately for each clearing member's proprietary and clearing member customer account, unique groupings of the data elements in paragraph (b) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(b) *Populating reported data records with data elements.* Data records reported under paragraph (a) of this section shall include the following data elements:

(1) An identifier assigned by the Commission to the clearing organization;

(2) The identifier assigned by the clearing organization to the clearing member;

(3) The identifier assigned by the clearing organization for a cleared product;

(4) The reporting day;

(5) A proprietary or clearing member customer account indicator;

(6) The futures equivalent month;

(7) The commodity reference price;

(8) Gross long swap positions;

(9) Gross short swap positions;

(10) A swaption put or call side indicator;

(11) A swaption expiration date;

(12) A swaption strike price;

(13) Gross long non-delta-adjusted swaption positions; and

(14) Gross short non-delta-adjusted swaption positions.

(c) *End of reporting day data.* For all futures equivalent months, clearing organizations shall report end of reporting day settlement prices for each cleared product and deltas for every unique swaption put and call, expiration date, and strike price.

§ 20.4 Reporting entities.

(a) *Consolidated accounts.* Each reporting entity shall combine all paired swap and swaption positions:

(1) That are principal positions (swaps and swaptions to which the reporting entity is a direct legal counterparty), in a single consolidated account that it shall attribute to itself; and

(2) That are positions of the reporting entity's counterparty in a single consolidated account that it shall attribute to that specific counterparty.

(b) *Reporting data records.* Reporting entities shall report to the Commission, for each reporting day, and separately for each reportable position in a consolidated account described in paragraphs (a)(1) and (a)(2) of this section, unique groupings of the data elements in paragraph (c) of this section (to the extent that there are such corresponding elements), in a single data record, so that each reported record is distinguishable from every other reported record (because of differing data values, as opposed to the arrangement of the elements).

(c) *Populating reported data records with data elements.* Data records reported under paragraph (b) of this

section shall include the following data elements:

(1) An identifier assigned by the Commission to the reporting entity;

(2) An identifier indicating that a principal or counterparty position is being reported;

(3) A 102S identifier assigned by the reporting entity to its counterparty;

(4) The name of the counterparty whose position is being reported;

(5) The reporting day;

(6) If cleared, the identifier for the cleared product assigned by the clearing organization;

(7) The commodity underlying the reportable positions;

(8) The futures equivalent month;

(9) A cleared or uncleared indicator;

(10) A clearing organization identifier;

(11) The commodity reference price;

(12) An execution facility indicator;

(13) Long paired swap positions;

(14) Short paired swap positions;

(15) A swaption put or call side indicator;

(16) A swaption expiration date;

(17) A swaption strike price;

(18) Long non-delta-adjusted paired swaption positions;

(19) Short non-delta-adjusted paired swaption positions;

(20) Long delta-adjusted paired swaption positions (using economically reasonable and analytically supported deltas);

(21) Short delta-adjusted paired swaption positions (using economically reasonable and analytically supported deltas);

(22) Long paired swap or swaption notional value; and

(23) Short paired swap or swaption notional value.

§ 20.5 Series S filings.

(a) *102S filing.*

(1) When a counterparty consolidated account first becomes reportable, the reporting entity shall submit a 102S filing, which shall consist of the name, address, and contact information of the counterparty and a brief description of the nature of such person's paired swaps and swaptions market activity.

(2) A reporting entity may submit a 102S filing only once for each counterparty, even if such persons at various times have multiple reportable positions in the same or different paired swaps or swaptions; however, reporting entities must update a 102S filing if the information provided is no longer accurate.

(3) Reporting entities shall submit a 102S filing within three days following the first day a consolidated account first becomes reportable or at such time as instructed by the Commission upon special call.

(b) *40S filing.* Every person subject to books or records under § 20.6 shall after a special call upon such person by the Commission file with the Commission a 40S filing at such time and place as directed in the call. A 40S filing shall consist of the submission of a Form 40, which shall be completed by such person as if any references to futures or option contracts were references to paired swaps or swaptions as defined in § 20.1.

§ 20.6 Maintenance of books and records.

(a) Every clearing organization shall keep all records of transactions in paired swaps or swaptions, and methods used to convert paired swaps or swaptions into futures equivalents, in accordance with the requirements of § 1.31 of this chapter.

(b) Every reporting entity shall keep all records of transactions in paired swaps or swaptions, and methods used to convert paired swaps or swaptions into futures equivalents, in accordance with the requirements of § 1.31 of this chapter.

(c) Every person with equal to or greater than 50 gross all-months-combined futures equivalent positions in paired swaps or swaptions on the same commodity shall:

(1) Keep books and records showing all records for transactions resulting in such positions, which may be kept and reproduced for Commission inspection in the record retention format that such person has developed in the normal course of its business operations; and

(2) Keep books and records showing transactions in the cash commodity underlying such positions or its products and byproducts, and all commercial activities that are hedged or which have risks that are mitigated by such positions, which may be kept in accordance with the recordkeeping schedule and reproduced for Commission inspection in the record retention format that such person has developed in the normal course of its business operations.

(d) All books and records required to be kept by paragraphs (a) through (c) of this section shall be furnished upon request to the Commission along with any pertinent information concerning such positions, transactions, or activities.

§ 20.7 Form and manner of reporting and submitting information or filings.

Unless otherwise instructed by the Commission, a clearing organization or reporting entity shall submit data records and any other information required under this part to the Commission as follows:

(a) Using the format, coding structure, and electronic data transmission procedures approved in writing by the Commission;

(b) For clearing organizations, not later than 9:00 a.m. eastern time on the next business day following the reporting day or at such other time as instructed by the Commission; and

(c) For clearing members and swap dealers, not later than 12:00 p.m. eastern time on the second (T+2) business day following the reporting day or at such other time as instructed by the Commission.

§ 20.8 Delegation of authority to the Director of the Division of Market Oversight.

(a) The Commission hereby delegates, until it orders otherwise, to the Director of the Division of Market Oversight or such other employee or employees as the Director may designate from time to time, the authority:

(1) In § 20.5(a)(3) for issuing a special call for a 102S filing;

(2) In § 20.5(b) for issuing a special call for a 40S filing;

(3) In § 20.6(d) for issuing a special call;

(4) In § 20.7 for providing instructions or determining the format, coding structure, and electronic data transmission procedures for submitting data records and any other information required under this part; and

(5) In § 20.10 for determining the described compliance schedules.

(b) The Director of the Division of Market Oversight may submit to the Commission for its consideration any matter which has been delegated in this section.

(c) Nothing in this section prohibits the Commission, at its election, from exercising the authority delegated in this section.

§ 20.9 Sunset provision.

(a) Except as otherwise provided in paragraph (b) of this section, the sections of this part shall become ineffective and unenforceable upon a Commission finding that, through the issuance of an order, operating swap data repositories are processing positional data and that such processing will enable the Commission to effectively surveil trading in paired swaps and swaptions and paired swap and swaption markets.

(b) The Commission may determine, in its discretion, to maintain the effectiveness and enforceability of any section of this part, or any requirement therein, in an order issued under paragraph (a) of this section, upon finding that such sections, or requirements therein, provide the

Commission with positional data or data elements that materially improves the accuracy and surveillance utility of the positional data processed by swap data repositories.

§ 20.10 Compliance schedule.

(a) Clearinghouses, clearing members and persons with books and records obligations shall comply with the requirements of this part upon the effective date of this part.

(b) Swap dealers that are not clearing members shall comply with the requirements of this part upon the effective date of final regulations further defining the term swap dealer.

(c) The Commission may permit, for a period not to exceed six calendar months following the effective date specified in paragraph (a) of this section, the submission of reports pursuant to §§ 20.3 and 20.4 that differ in content, or are submitted in a form and manner which is other than prescribed by the provisions of this part, provided that the submitter is making a good faith attempt to comply with all of the provisions of this part.

(d) Unless determined otherwise by the Commission, paired swap and swaption position and market reports submitted under parts 15 through 19, or 21 of this chapter, or any order of the Commission, shall continue to be submitted under those parts or orders until swap dealers are required to comply with § 20.4.

(e) The Commission may extend the compliance date established in paragraph (b) of this section by an additional six calendar months based on resource limitations or lack of experience in reporting transactions to the Commission for a swap dealer that is not an affiliate of a bank holding company and:

(1) Is not registered with the Commission as a futures commission merchant and is not an affiliate of a futures commission merchant;

(2) Is not registered with the Securities and Exchange Commission as a broker or dealer and is not an affiliate of a broker or dealer; and

(3) Is not supervised by any Federal prudential regulator.

§ 20.11 Diversified commodity indices.

For the purpose of reporting in futures equivalents, paired swaps and swaptions using commodity reference prices that are commonly known diversified indices with publicly available weightings may be reported as if such indices underlie a single futures contract with monthly expirations for each calendar month and year.

Appendix A to Part 20—Guidelines on Futures Equivalency

The following examples illustrate how swaps should be converted into futures equivalents. In general the total notional quantity for each swap should be apportioned to referent futures months based on the fraction of days remaining in the life of the swap during each referent futures month to the total duration of the swap, measured in days. The terms used in the examples are to be understood in a manner that is consistent with industry practice.

EXAMPLE 1—FIXED FOR FLOATING WTI CRUDE OIL SWAP LINKED TO A DCM CONTRACT

Reference Price	Daily official next to expire contract price for the NYMEX Light Sweet Crude Oil Futures Contract ("WTI") in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Notional Quantity	100,000 bbls/month.
Calculation Period	One month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures Equivalent Position on January 1

Total Notional Quantity = 6 months * 100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract

Therefore 600,000 bbls/1,000 bbls/contract = 600 futures equivalent contracts

Total number of days in swap term = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1—January 22	February	22/181	73	−73
January 23—February 22	March	31/181	103	−103
February 23—March 22	April	28/181	93	−93
March 23—April 22	May	31/181	103	−103
April 23—May 22	June	30/181	99	−99
May 23—June 22	July	31/181	103	−103
June 23—June 30th	August	8/181	27	−27
Total		181/181	601	−601

† Contracts rounded to the nearest integer.

Futures equivalent position on January 2

Total Notional Quantity = Remaining swap term * 100,000 bbls/month = 596,685 bbls

1,000 bbl = 1 futures contract

Therefore 596,685 bbls/1,000 bbls/contract = 597 futures equivalent contracts

Total number of days = 30 + 28 + 31 + 30 + 31 + 30 = 180

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 2 (EXAMPLE 1 CONTINUED)

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 2—January 22	February	21/180	70	−70
January 23—February 22	March	31/180	103	−103
February 23—March 22	April	28/180	93	−93
March 23—April 22	May	31/180	103	−103
April 23—May 22	June	30/180	99	−99
May 23—June 22	July	31/180	103	−103
June 23—June 30th	August	8/180	27	−27
Total		180/180	597	−597

† Contracts rounded to the nearest integer.

EXAMPLE 2—FIXED FOR FLOATING CORN SWAP

Reference Price	Daily official next to expire contract price for the CBOT Corn Futures Contract in $/bushel through the CBOT spot month.
Fixed Price	$5.00 per bushel per month.
Floating Price	The arithmetic average of the reference price during the pricing period.
Calculation Period	One month.
Notional Quantity	1,000,000 bushels/month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

Last trading day in the nearby CBOT Corn futures contract is the business day preceding the 15th of the contract month. For simplicity in this example, the last trading day in each Corn futures contract is shown as the 14th of the month. Futures contract months for corn are March, May, July, September, and December.

Futures Equivalent Position on January 1

Total Notional Quantity = 6 contract months * 1,000,000 bushels/month = 6,000,000 bushels

5,000 bushels = 1 futures contract

Therefore 6,000,000 bushels/5,000 bushels/contract = 1,200 futures equivalent contracts

Total days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1–March 14	March	73/181	483	−483
March 15–May 14	May	61/181	404	−404
May 15–June 30	July	47/181	311	−311
Total		181/181	1,198	−1,198

† Contracts rounded to the nearest integer.

EXAMPLE 3—FIXED FOR FLOATING NY RBOB (PLATTS) CALENDAR SWAP FUTURES

Reference Price	Platts Oilgram next to expire contract Price Report for New York RBOB (Barge) through the NYMEX spot month.
Fixed Price	$1.8894 per gallon.
Floating Price	For each contract month, the floating price is equal to the arithmetic average of the high and low quotations from Platts Oilgram Price Report for New York RBOB (Barge) for each business day that it is determined during the contract month.
Calculation Period	One quarter.
Notional Quantity	84 million gallons/quarter.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.

EXAMPLE 3—FIXED FOR FLOATING NY RBOB (PLATTS) CALENDAR SWAP FUTURES—Continued

Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX NY RBOB (Platts) Calendar Swap Futures Contract month ends on the final business day of the contract month. For simplicity in this example, the last trading day in each futures contract is shown as the final day of the month.

Futures Equivalent Position on January 1

Total Notional Quantity = 2 quarters * 84 million = 168 million gallons

42,000 gallons = 1 futures contract

Therefore 168 million/42,000 gallons/futures contract = 4,000 futures equivalent contracts

Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long) †	Company B position (short) †
January 1–March 31	April	90/181	1989	−1989
April 1–June 30	July	91/181	2011	−2011
Total		181/181	4000	−4000

† Contracts rounded to the nearest integer.

EXAMPLE 4—CALENDAR SPREAD SWAP

Reference Price	The difference between the next to expire contract price for the NYMEX WTI Futures contract and the deferred contract price for the NYMEX WTI Futures contract.
Fixed Price	$80 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Calculation Period	One month.
Notional Quantity	100,000 bbls/month.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement Type	Financial.
Swap Term	Six full months from January 1 to June 30.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading in the next to expire futures contract ceases on the third business day prior to the 25th of the calendar month preceding the contract month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures Equivalent Position on January 1

Total Notional Quantity = 6 months * 100,000 bbls/month = 600,000 bbls

1,000 bbl = 1 futures contract

Therefore 600,000 bbls/1,000 bbls/contract = 600 futures equivalent contracts

Total number of days = 31 + 28 + 31 + 30 + 31 + 30 = 181

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Applicable next to expire futures month	Company A position (long)†	Company B position (short)†	Applicable deferred futures month	Company A position (short)†	Company B position (long)†
January 1—January 22	22/181	February	73	−73	March	−73	73
January 23—February 22	31/181	March	103	−103	April	−103	103
February 23—March 22	28/181	April	93	−93	May	−93	93
March 23—April 22	31/181	May	103	−103	June	−103	103
April 23—May 22	30/181	June	99	−99	July	−99	99
May 23—June 22	31/181	July	103	−103	August	−103	103
June 23—June 30th	8/181	August	27	−27	September	−27	27
Total	181/181		601	−601		−601	601

† Contracts rounded to the nearest integer.

EXAMPLE 5—COLUMBIA GULF, MAINLINE MIDPOINT ("MIDPOINT') BASIS SWAP

Reference Price	The Platts Gas Daily Columbia Gulf, Mainline Midpoint ("Midpoint") and the next to expire NYMEX (Henry Hub) Natural Gas Futures contract.
Fixed Price	$0.05 per MMBtu.
Floating Price	The Floating Price will be equal to the arithmetic average of the daily value of the Platts Gas Daily Columbia Gulf, Mainline Midpoint ("Midpoint") minus the NYMEX (Henry Hub) Natural Gas Futures contract daily settlement price.
Calculation Period	Monthly.
Notional Quantity	10,000 MMBtu/calendar day.
Fixed Price Payer	Company A.
Floating Price Payer	Company B.
Settlement type	Financial.
Swap Term	One month from January 1 to January 31.
Floating Amount	Floating Price * Notional Quantity * calendar days in the month.
Fixed Amount	Fixed Price * Notional Quantity * calendar days in the month.

NYMEX Henry Hub Natural Gas Futures Contract trading ceases three business days prior to the first day of the delivery month. For simplicity in this example, the last trading day in the futures contract is shown as the 28th of the month.

Futures Equivalent Position on January 1

Total Notional Quantity for each leg = 1 month * 31 days/month * 10,000 MMBtu/day = 310,000 MMBtu

10,000 MMBtu = 1 futures contract

Therefore 310,000 MMBtu/10,000 MMBtu/contract = 31 futures equivalent contracts

Total number of days = 31

FUTURES EQUIVALENT POSITION OF SWAP ON JANUARY 1

Dates swap in force	Fraction of days	Referent futures month	Company A position in Columbia Gulf, Mainline Midpoint ("Midpoint") natural gas (long) MMBtu	Company A Position in NYMEX (Henry Hub) natural gas futures (short)	Company B position in Columbia Gulf, Mainline Midpoint ("Midpoint") natural gas (short) MMBtu	Company B position in NYMEX (Henry Hub) natural gas futures (long)
January 1—January 28	28/31	February	†††	−28	†††	28
January 29—January 31	3/31	March		−3		3
Total	31/31			−31		31

††† Note: Because there is no underlying position taken in a basis contract, for reporting purposes, only enter the futures equivalent contract quantities into the corresponding futures.

EXAMPLE 6—WTI SWAPTION (CALL)

Swaption Style	American.
Option Type	Call.
Swaption Start Date	Jan 1 of the current year.
Swaption End Date	June 30 of the current year.
Strike Price	$80.50/bbl.
Notional Quantity	100,000 bbl/month.
Calculation Period	One month.
Reference Price	Daily official next to expire contract price for WTI NYMEX Crude Oil Futures Contract in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel per month.
Floating Price	The arithmetic average of the reference price during the pricing period.
Settlement Type	Financial.
Swap Term	One month from July 1 to July 31 of the current year.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures Equivalent Position on January 1

Total Notional Quantity = 1 month*100,000 bbls/month=100,000 bbls

1,000 bbl = 1 futures contract

Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts

Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position (long)†	Company B position (short)†
July 1 –July 22	August	22/31	70	−70
July 23—July 31	September	9/31	29	−29
Total		31/31	99	−99

† Contracts rounded to the nearest integer.

DELTA†† ADJUSTED POSITION AND FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August		September	
	Delta	Position	Delta	Position
January 1	.2	14	.2	5

†† Deltas should be calculated in an economically reasonable and analytically supportable basis.

EXAMPLE 7—WTI COLLAR SWAP

Swaption Style	American.
Swaption Start Date	Jan 1 of the current year.
Swaption End Date	June 30 of the current year.
Call strike Price	$70.00 per bbl.
Put strike price	$90.00 per bbl.
Notional Quantity	100,000 barrels per month.
Calculation Period	One month.
Reference Price	Daily official next to expire contract price for WTI NYMEX Crude Oil in $/bbl through the NYMEX spot month.
Fixed Price	$80.00 per barrel.
Floating Price	The arithmetic average of the reference price during the pricing period.
Settlement Type	Financial.
Swap Term	One month from July 1 to July 31 of the current year.
Floating Amount	Floating Price * Notional Quantity.
Fixed Amount	Fixed Price * Notional Quantity.

NYMEX WTI trading ceases on the third business day prior to the 25th of the calendar month preceding the delivery month. For simplicity in this example, the last trading day in each WTI futures contract is shown as the 22nd of the month.

Futures Equivalent Position on January 1

Total Notional Quantity = 1 month * 100,000 bbls/month = 100,000 bbls

1,000 bbl = 1 futures contract

Therefore 100,000 bbls/1,000 bbls/contract = 100 futures equivalent contracts

Total number of days = 31

GROSS POSITION ON JANUARY 1

Dates swap in force	Referent futures month	Fraction of days	Company A position		Company B position	
			Call	Put	Call	Put
July 1–July 22	August	22/31	70.97	70.97	−70.97	−70.97
July 23–July 31	September	9/31	29.03	29.03	−29.03	−29.03
Total		31/31	100	100	−100	−100

COMPANY (A) DELTA† ADJUSTED POSITION ON JANUARY 1

Date	August				September			
	Long call		Short put		Long call		Short put	
	Delta	Position	Delta	Position	Delta		Delta	Position
January 1	.7	49	.3	−21	.7	20	.3	−8

† Deltas should be calculated in an economically reasonable and analytically supportable basis.

FUTURES EQUIVALENT POSITION ON JANUARY 1

Date	August††		September††	
	Long	Short	Long	Short
January 1	70	0	28	0

†† Contracts rounded to the nearest integer.

Appendix B to Part 20—Explanatory Guidance on Data Record Layouts

Record Layout Examples for § 20.3

The following example (in Tables 1, 2 and 3) covers reporting for a particular clearing organization. ''Clearing Organization One'' would report, for the 27th of September 2010, the following eleven unique data record submissions. Each data record submission represents a unique position, as indicated by § 20.3, held by a clearing member of Clearing Organization One. Paragraph (a) of § 20.3 broadly outlines the data elements that determine unique positions for reports on clearing member positions. Paragraphs (b) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record for a particular clearing member (in Table 1). Paragraph (c) identifies data elements that would comprise end of day record data on cleared products (in Tables 2 and 3). Therefore, paragraphs (b) and (c) of § 20.3 present all of the data elements that should be submitted in reference to a particular data record.

Because CFTC designated Clearing Organization One (in this example) currently has two clearing members, ''Clearing Member One'' and ''Clearing Member Two,'' positions cleared for these two distinct clearing members would be subdivided.

In the following example it is assumed that the clearing member accounts are either proprietary or customer (but not both) and therefore data record submissions do not have to be delineated by these account types. However, if clearing members did have both proprietary and customer accounts, then a clearing organization would have to further subdivide these clearing member data records by these two account types.

Clearing Member One currently has five positions with multiple cleared product IDs and futures equivalent months/years, and therefore these positions also constitute separate data records.

Clearing Member Two currently has six positions with the following varying characteristics: Cleared product IDs; futures equivalent months/years; commodity reference prices; swaption positions that involve both puts and calls; and multiple strike prices. Accordingly, these positions must be reported in separate data records. An illustration of how these records would appear is included in Table 1 below. Clearing Organization One would also have to report the corresponding swaption position deltas, strike prices, expiration dates, and settlement prices and swap settlement prices. An illustration of these submissions is included in Tables 2 and 3 below.

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 1	CCO_ID_1	CM_ID_2	CP_04	9/27/2010	C	Nov-10	NYMEX NY Harbor No.2.
Data record 2	CCO_ID_1	CM_ID_2	CP_04	9/27/2010	C	Oct-10	NYMEX NY Harbor No.2.
Data record 3	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Nov-10	NYMEX Henry Hub.
Data record 4	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Oct-10	NYMEX Henry Hub.
Data record 5	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Nov-10	NYMEX Henry Hub.
Data record 6	CCO_ID_1	CM_ID_2	CP_02	9/27/2010	C	Oct-10	NYMEX Henry Hub.
Data record 7	CCO_ID_1	CM_ID_1	CP_03	9/27/2010	P	Mar-11	NYMEX Light Sweet.
Data record 8	CCO_ID_1	CM_ID_1	CP_03	9/27/2010	P	Feb-11	NYMEX Light Sweet.
Data record 9	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Mar-11	NYMEX Light Sweet.
Data record 10	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Feb-11	NYMEX Light Sweet.
Data record 11	CCO_ID_1	CM_ID_1	CP_01	9/27/2010	P	Jan-11	NYMEX Light Sweet.
NDR	Yes	Yes	Yes	Yes	Yes	Yes	No.

Data records	Long swap position	Short swap position	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position
Data record 1	0	5000					
Data record 2	0	2000					
Data record 3			C	7/29/2011	5.59	2000	0

TABLE 1—DATA RECORDS REPORTED UNDER PARAGRAPHS (a) AND (b) OF § 20.3—Continued

Data records	CFTC clearing org ID	Clearing org clearing member ID	Clearing org cleared product ID	Reporting day	Proprietary/customer account indicator	Futures equivalent month and year	Commodity reference price
Data record 4			C	7/29/2011	5.59	18000	0
Data record 5			P	7/29/2011	5.50	100	30
Data record 6			P	7/29/2011	5.50	900	270
Data record 7	5000	0					
Data record 8	5000	0					
Data record 9	429	1286					
Data record 10	2281	6843					
Data record 11	1290	3871					
NDR	No	No	Yes	Yes	Yes	No	No.

Note: The bottom row of Table 1 indicates whether data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

TABLE 2—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(C) FOR CLEARED SWAPTION PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swaption expiration date	Swaption strike price	Put/call indicator	Delta	Swaption daily settlement price
Data record 1	CCO_ID_1	CP_02	9/27/2010	Nov-10	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	6.25
Data record 2	CCO_ID_1	CP_02	9/27/2010	Oct-10	NYMEX Henry Hub.	7/29/2011	5.59	C	.5	5.50
Data record 3	CCO_ID_1	CP_02	9/27/2010	Nov-10	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.53
Data record 4	CCO_ID_1	CP_02	9/27/2010	Oct-10	NYMEX Henry Hub.	7/29/2011	5.50	P	.2	4.78

TABLE 3—EXAMPLE OF DATA RECORDS REQUIRED UNDER § 20.3(C) FOR CLEARED SWAP PRODUCTS

Data records	CFTC clearing org ID	Clearing org cleared product ID	Reporting day	Futures equivalent month and year	Commodity reference price	Swap daily settlement price
Data record 1	CCO_ID_1	CP_04	9/27/2010	Nov-10	NYMEX NY Harbor No. 2	20.35
Data record 2	CCO_ID_1	CP_04	9/27/2010	Oct-10	NYMEX NY Harbor No. 2	10.50
Data record 3	CCO_ID_1	CP_03	9/27/2010	Mar-11	NYMEX Light Sweet	15.00
Data record 4	CCO_ID_1	CP_03	9/27/2010	Feb-11	NYMEX Light Sweet	21.00
Data record 5	CCO_ID_1	CP_01	9/27/2010	Mar-11	NYMEX Light Sweet	17.50
Data record 6	CCO_ID_1	CP_01	9/27/2010	Feb-11	NYMEX Light Sweet	21.65
Data record 7	CCO_ID_1	CP_01	9/27/2010	Jan-11	NYMEX Light Sweet	12.50

First Record Layout Example for § 20.4:

This first example shows the data records generated under § 20.4 by a single reporting firm for report date September 27, 2011. Each data record represents a unique part of a reportable position in heating oil and natural gas by the reporting entity and its counterparties. Paragraph (b) of § 20.4 outlines the data elements that determine unique positions.

In this example, the reporting entity clears with one clearing organization and therefore the data records do not have to be delineated by clearing organization (there is a reportable position stemming from an uncleared transaction included as well). However, if the reporting entity in this example used multiple clearing organizations, then it would have to further subdivide its data submissions by each clearing organization.

The reporting entity reports fifteen records; six principal positions and nine counterparty positions. The reported positions constitute separate data records because they vary by the following characteristics: swap counterparties; futures equivalent months/years; clearing organization cleared products; swaptions that were either cleared or uncleared; commodity reference prices; and whether the trade was entered into on or off execution facilities. An illustration of how these records would be reported is included in Table 4 below.

For the calculation of notional values, assume for simplicity that the price of heating oil, for all contract months and for both reference prices, is $3/gal. Similarly, assume that the price of natural gas for all contract months is $4.25/MMBtu.

Note: The bottom two rows in Table 4 indicate whether, for uncleared and cleared swaps and swaptions, data elements for which any difference in one of the elements constitutes a reason for a new data record (NDR).

TABLE 4—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(C)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S Swap counterparty ID	Counterparty name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	CRE_ID_1	PRIN			9/27/2011	CPID_05	HO	Jan-12
Data record 2	CRE_ID_1	COUNT	CP_01	Energy_Firm_1	9/27/2011	CPID_05	HO	Jan-12
Data record 3	CRE_ID_1	COUNT	CP_02	Energy_Firm_2	9/27/2011	CPID_05	HO	Jan-12
Data record 4	CRE_ID_1	PRIN			9/27/2011	CPID_04	HO	Feb-12
Data record 5	CRE_ID_1	COUNT	CP_03	Energy_Firm_3	9/27/2011	CPID_04	HO	Feb-12
Data record 6	CRE_ID_1	PRIN			9/27/2011	CPID_04	HO	Mar-12
Data record 7	CRE_ID_1	COUNT	CP_04	ABC_Firm	9/27/2011	CPID_04	HO	Mar-12
Data record 8	CRE_ID_1	PRIN			9/27/2011	CDIP_07	NG	Mar-12
Data record 9	CRE_ID_1	COUNT	CP_05	XYZ_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 10	CRE_ID_1	COUNT	CP_06	WVU_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 11	CRE_ID_1	COUNT	CP_01	Energy_Firm_1	9/27/2011	CDIP_07	NG	Mar-12
Data record 12	CRE_ID_1	PRIN			9/27/2011	CDIP_07	NG	Mar-12
Data record 13	CRE_ID_1	COUNT	CP_07	MNO_Firm	9/27/2011	CDIP_07	NG	Mar-12
Data record 14	CRE_ID_1	PRIN			9/27/2011	UNCL	NG	Jan-12
Data record 15	CRE_ID_1	COUNT	CP_02	Energy_Firm_2	9/27/2011	UNCL	NG	Jan-12
NDR Uncleared	Yes	Yes	Yes	No	Yes	N/A	No	Yes
NDR Cleared	Yes	Yes	Yes	No	Yes	Yes	No	Yes

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1	200	
Data record 2	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1		50
Data record 3	C	CCO_ID_1	Platts Oilgram Price Report for New York No. 2 (Barge).	EX1		150
Data record 4	C	CCO_ID_1	NYMEX NY Harbor No.2	EX2	350	
Data record 5	C	CCO_ID_1	NYMEX NY Harbor No.2	EX2		350
Data record 6	C	CCO_ID_1	NYMEX NY Harbor No.2	EX1	100	
Data record 7	C	CCO_ID_1	NYMEX NY Harbor No.2	EX1		100
Data record 8	C	CCO_ID_1	NYMEX Henry Hub	EX3	200	100
Data record 9	C	CCO_ID_1	NYMEX Henry Hub	EX3		125
Data record 10	C	CCO_ID_1	NYMEX Henry Hub	EX3		75
Data record 11	C	CCO_ID_1	NYMEX Henry Hub	EX3	100	
Data record 12	C	CCO_ID_1	NYMEX Henry Hub	EX1		
Data record 13	C	CCO_ID_1	NYMEX Henry Hub	EX1		
Data record 14	U	U	NYMEX Henry Hub	NOEX		
Data record 15	U	U	NYMEX Henry Hub	NOEX		
NDR Uncleared	Yes	N/A	Yes	Yes	No	No
NDR Cleared	Yes	Yes	No	Yes	No	No

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted short swaption position	Long swap or swaption notional value position	Short swap or swaption otional value position
Data record 1								$25,200,000	
Data record 2									$6,300,000
Data record 3									$18,900,000
Data record 4								$44,100,000	
Data record 5									$44,100,000
Data record 6								$12,600,000	
Data record 7									$12,600,000
Data record 8								$8,500,000	$4,250,000
Data record 9									$5,312,500
Data record 10									$3,187,500
Data record 11								$4,250,000	
Data record 12	C	2/27/2012	4.00	100		80		$3,400,000	
Data record 13	C	2/27/2012	4.00		100		80		$3,400,000
Data record 14	C	12/27/2011	4.25	100		95		$4,037,500	
Data record 15	C	12/27/2011	4.25		100		95		$4,037,500
NDR Uncleared	Yes	Yes	Yes	No	No	No	No	No	No
NDR Cleared	Yes	Yes	Yes	No	No	No	No	No	No

Second Record Layout Example for § 20.4:

In this second example, the data records generated by § 20.4(c) are displayed for a hypothetical swap, as detailed in Example 1 of Appendix A. In contrast to the above example, this second example of a § 20.4(c) data record is simplistic in that it displays a situation where the position records arise from a single swap transaction, in one commodity, with a single counterparty.

For the sake of this example, assume the swap dealer gained long exposure from the swap, and that the swap was cleared. The price of crude is assumed to be $100/bbl for all contract months on January 1 and $95/bbl for all contract months on January 2. An illustration of the data records generated for January 1, 2011 and January 2, 2011 as a result of this hypothetical swap can be found in Tables 5 and 6, respectively.

TABLE 5—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(c) FOR JANUARY 1, 2011 (APPX A, EXAMPLE 1)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S swap counterparty ID	Counterparty Name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	SD_1	PRIN			1/1/2011	CPID_03	CL	Feb-11
Data record 2	SD_1	PRIN			1/1/2011	CPID_03	CL	Mar-11
Data record 3	SD_1	PRIN			1/1/2011	CPID_03	CL	Apr-11
Data record 4	SD_1	PRIN			1/1/2011	CPID_03	CL	May-11
Data record 5	SD_1	PRIN			1/1/2011	CPID_03	CL	Jun-11
Data record 6	SD_1	PRIN			1/1/2011	CPID_03	CL	Jul-11
Data record 7	SD_1	PRIN			1/1/2011	CPID_03	CL	Aug-11
Data record 8	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Feb-11
Data record 9	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Mar-11
Data record 10	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Apr-11
Data record 11	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	May-11
Data record 12	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Jun-11
Data record 13	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Jul-11
Data record 14	SD_1	COUNT	CP_01	Energy_Firm_1	1/1/2011	CPID_03	CL	Aug-11

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	NYMEX Light Sweet	EX1	73	
Data record 2	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 3	C	CCO_ID_1	NYMEX Light Sweet	EX1	93	
Data record 4	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 5	C	CCO_ID_1	NYMEX Light Sweet	EX1	99	
Data record 6	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 7	C	CCO_ID_1	NYMEX Light Sweet	EX1	27	
Data record 8	C	CCO_ID_1	NYMEX Light Sweet	EX1		73
Data record 9	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 10	C	CCO_ID_1	NYMEX Light Sweet	EX1		93
Data record 11	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 12	C	CCO_ID_1	NYMEX Light Sweet	EX1		99
Data record 13	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 14	C	CCO_ID_1	NYMEX Light Sweet	EX1		27

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted long swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1								$7,300,000	
Data record 2								$10,300,000	
Data record 3								$9,300,000	
Data record 4								$10,300,000	
Data record 5								$9,900,000	
Data record 6								$10,300,000	
Data record 7								$2,700,000	
Data record 8									$7,300,000
Data record 9									$10,300,000
Data record 10									$9,300,000
Data record 11									$10,300,000
Data record 12									$9,900,000
Data record 13									$10,300,000
Data record 14									$2,700,000

TABLE 6—EXAMPLE OF DATA RECORDS REPORTED UNDER § 20.4(C) FOR JANUARY 2, 2011 (APPX A, EXAMPLE 1)

Data records	Commission reporting entity ID	Principal/counterparty position indicator	102S Swap counterparty ID	Counterparty name	Reporting day	Clearing org cleared product ID	Commodity code	Futures equivalent month and year
Data record 1	SD_1	PRIN			1/2/2011	CPID_03	CL	Feb-11
Data record 2	SD_1	PRIN			1/2/2011	CPID_03	CL	Mar-11
Data record 3	SD_1	PRIN			1/2/2011	CPID_03	CL	Apr-11
Data record 4	SD_1	PRIN			1/2/2011	CPID_03	CL	May-11
Data record 5	SD_1	PRIN			1/2/2011	CPID_03	CL	Jun-11
Data record 6	SD_1	PRIN			1/2/2011	CPID_03	CL	Jul-11
Data record 7	SD_1	PRIN			1/2/2011	CPID_03	CL	Aug-11
Data record 8	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Feb-11
Data record 9	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Mar-11
Data record 10	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Apr-11
Data record 11	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	May-11
Data record 12	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Jun-11
Data record 13	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Jul-11
Data record 14	SD_1	COUNT	Counterparty_1	Energy Firm	1/2/2011	CPID_03	CL	Aug-11

Data records	Cleared/uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 1	C	CCO_ID_1	NYMEX Light Sweet	EX1	70	

Data records	Cleared/ uncleared indicator	CFTC clearing org identifier	Commodity reference price	Execution facility	Long swap position	Short swap position
Data record 2	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 3	C	CCO_ID_1	NYMEX Light Sweet	EX1	93	
Data record 4	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 5	C	CCO_ID_1	NYMEX Light Sweet	EX1	99	
Data record 6	C	CCO_ID_1	NYMEX Light Sweet	EX1	103	
Data record 7	C	CCO_ID_1	NYMEX Light Sweet	EX1	27	
Data record 8	C	CCO_ID_1	NYMEX Light Sweet	EX1		70
Data record 9	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 10	C	CCO_ID_1	NYMEX Light Sweet	EX1		93
Data record 11	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 12	C	CCO_ID_1	NYMEX Light Sweet	EX1		99
Data record 13	C	CCO_ID_1	NYMEX Light Sweet	EX1		103
Data record 14	C	CCO_ID_1	NYMEX Light Sweet	EX1		27

Data records	Put/call indicator	Swaption expiration date	Swaption strike price	Non-delta adjusted long swaption position	Non-delta adjusted short swaption position	Delta adjusted long swaption position	Delta adjusted long swaption position	Long swap or swaption notional value position	Short swap or swaption notional value position
Data record 1								$6,650,000	
Data record 2								$9,785,000	
Data record 3								$8,835,000	
Data record 4								$9,785,000	
Data record 5								$9,405,000	
Data record 6								$9,785,000	
Data record 7								$2,565,000	
Data record 8									$6,650,000
Data record 9									$9,785,000
Data record 10									$8,835,000
Data record 11									$9,785,000
Data record 12									$9,405,000
Data record 13									$9,785,000
Data record 14									$2,565,000

Issued by the Commission this 7th day of July, 2011 in Washington, DC.

David Stawick,

Secretary of the Commission.

Appendices to Large Trader Reporting for Physical Commodity Swaps—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to establish large trader reporting for physical commodity swaps. This is a significant rulemaking that, for the first time, enables the CFTC to receive data from large traders in the commodity swaps markets.

The American public has benefited for decades by the Commission's ability to gather large trader data in the futures market and use that data to police the markets. Today's large trader reporting rulemaking establishes that clearinghouses and swap dealers will have to report to the CFTC about the swaps activities of large traders in the physical swaps markets.

Over time, as a result of the Dodd-Frank Act, the markets will benefit from swap data repositories. Today's rulemaking will enable the Commission to gather important swaps data until there are robust, well-regulated swap data repositories. This data will be useful for the Commission to monitor and police the markets, including establishing and enforcing position limits.

[FR Doc. 2011–18054 Filed 7–21–11; 8:45 am]

BILLING CODE P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 160

RIN 3038–AD13

Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is amending its rules implementing new statutory provisions enacted by titles VII and X of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). Section 1093 of the Dodd-Frank Act provides for certain amendments to title V of the Gramm-Leach-Bliley Act (the ''GLB Act''). The GLB Act sets forth certain protections for the privacy of consumer financial information and was amended by the Dodd-Frank Act to affirm the Commission's jurisdiction in this area. The Commission's amendments to its regulations, inter alia, broaden the scope of part 160 to cover two new entities created by title VII of the Dodd-Frank Act: swap dealers and major swap participants.

DATES: *Effective date:* September 20, 2011.

Compliance dates: Futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers, and retail foreign exchange dealers shall be in compliance with these rules not later than November 21, 2011. Swap dealers and major swap participants shall be in compliance with these rules not later than 60 days after the effective date of the final entities definition rulemaking, which the Commission will publish in the **Federal Register** at a future date.

FOR FURTHER INFORMATION CONTACT: Carl E. Kennedy, Counsel, Office of General Counsel, (202) 418–6625, e-mail: *c_kennedy@cftc.gov,* Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Section 5g(b) of the CEA provides the Commission with the authority to

prescribe regulations that establish appropriate standards for financial institutions subject to its jurisdiction to safeguard customer records and information in accordance with title V of the GLB Act.[1] Pursuant to this authority, the Commission promulgated part 160 of its regulations to require certain CFTC-regulated entities[2] to adopt appropriate policies and procedures that address safeguards to customer records and information, including initial and annual privacy notice requirements, opt-out provisions to the extent that these registrants wish to share such records and information with non-affiliates, and other measures to protect nonpublic consumer information.[3]

On October 27, 2010, the Commission published for comment in the **Federal Register** proposed amendments to part 160 of its regulations (the ''Proposal'')[4] to implement certain provisions in titles VII and X of the Dodd-Frank Wall Street Financial Reform and Consumer Protection Act (the ''Dodd-Frank Act'').[5]

In the Proposal, the Commission sought comments on proposed amendments to part 160 in accordance with section 1093[6] and title VII of the Dodd-Frank Act to, inter alia, broaden the types of entities that are subject to the Commission's jurisdiction[7] to provide certain privacy protections for consumer financial information to include swap dealers (SDs) and major swap participants (MSPs). In addition, the Commission proposed: (1) in accordance with the transfer of authority in title X, changing all references in part 160 from the FTC to the Bureau; and (2) renaming part 160 to ''Privacy of Consumer Financial Information under the Gramm-Leach-Bliley Act'' to harmonize the title of part 160 with a new part of the Commission's regulations.[8]

The 60-day public comment period on the Proposal expired on December 27, 2010. In response to the Proposal, the Commission received a total of six comments: Two substantive comments and four other comments that did not address the merits or substance of the Proposal.

The Securities Industry and Financial Markets Association (''SIFMA'') commented on the following aspects of the proposal: (1) The proposed compliance date; (2) the annual burden estimate for the purpose of the Paperwork Reduction Act analysis and cost-benefit analysis; and (3) the appropriate standard applicable with regard to state laws.

The International Swaps and Derivatives Association, Inc. (''ISDA'') and the Financial Services Roundtable (''FSR'') jointly submitted a comment letter generally in support of the Proposal. That is, ISDA and the FSR did not provide specific comments in response to the Proposal. ISDA and the FSR, however, encouraged the Commission to work collaboratively with other agencies to decrease duplication in regulation and increase efficiency industry-wide.

The Commission's final rules, the specific comments noted above and the Commission's responses to those specific comments are discussed in greater detail below.[9]

II. Rule Amendments

A. Renaming the Title of Part 160

The Commission is renaming the title of part 160 to reflect the scope of the part 160 regulations. The Commission's part 160 regulations implement certain protections for the privacy of consumer financial information under the GLB Act. To harmonize the title of part 160 with the new part 162 being adopted under a separate rulemaking,[10] Part 160 is renamed ''Privacy of Consumer Financial Information under the Gramm-Leach-Bliley Act.''

B. Scope of 17 CFR 160.1(b)

Regulation 160.1(b) sets out the scope of the Commission's rules and identifies the financial institutions covered by the rules that include CFTC registrants regardless of whether they are required to register with the Commission. As referenced above, the Commission is amending the scope of part 160 to add SDs and MSPs.

C. Section 160.3—Definitions

Since the scope of the regulations extends to SDs and MSPs, the Commission amends § 160.3 to add the definitions of SDs and MSPs to the list

[1] *See* Gramm-Leach-Bliley Act, Public Law 106–102, 113 Stat. 1338 (1999) (codified in scattered sections of 12 U.S.C. and 15 U.S.C.). As enacted, title V of the GLB Act limits the instances in which a financial institution may disclose nonpublic personal information about a consumer to nonaffiliated third parties, and requires a financial institution to disclose to all of its customers the institution's privacy policies and practices with respect to information sharing with both affiliates and nonaffiliated third parties. Section 5g(b) of the CEA treats the Commission as a Federal functional regulator within the meaning of title V of the GLB Act.

[2] The Commission did not become subject to title V of the GLB Act until 2000. Section 5g of the CEA was added by the Commodity Futures Modernization Act of 2000 (7 U.S.C. 7b–2) to make the Commission a ''Federal functional regulator'' subject to the GLB Act Title V. Section 5g provides that the following entities are subject to the Commission's jurisdiction for the purposes of title V of the GLB Act: futures commission merchants (''FCMs''), commodity trading advisors (''CTAs''), commodity pool operators (''CPOs''), and introducing brokers (''IBs''). The scope of the part 160 rules mirrors this list of entities.

The Commission jointly promulgated final rules with the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Depository Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Securities and Exchange Commission (collectively, the ''Agencies'') on April 27, 2001. *See* 66 FR 21236, Apr. 27, 2001. On September 10, 2010, the Commission expanded the scope of entities subject to the part 160 rules to include retail foreign exchange dealers (''RFEDs'').

[3] Section 160.3(h)(1) of the Commission's regulations defines the term consumer to mean ''an individual who obtains or has obtained a financial product or service from [a financial institution] that is to be used primarily for personal, family or household purposes, or that individual's legal representative.''

[4] *See* 75 FR 66014, Oct. 27, 2010.

[5] *See* Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov*. Title X of the Dodd-Frank Act creates a new consumer financial services regulator, the Bureau of Consumer Financial Protection (the ''Bureau''), that will assume most of the consumer financial services regulatory responsibilities currently spread among numerous agencies. However, these rules will continue to apply to financial institutions that are subject to the Commission's jurisdiction. In addition, the Commission will continue to have plenary oversight authority over such institutions.

[6] Specifically, section 1093 of the Dodd-Frank Act amends section 504 of the GLB Act by providing that ''the [CFTC] shall have the authority to prescribe such regulations as may be necessary to carry out the purposes of [title V of the GLB Act] with respect to any financial institutions and other persons subject to the jurisdiction of the [CFTC] under section 5g of the [CEA].'' As discussed in the proposing release, the Commission has determined that section 1093 simply reaffirms its authority to prescribe regulations under title V of the GLB Act.

[7] Title VII of the Dodd-Frank Act creates two new entities over which the Commission has jurisdiction: swap dealers (''SDs'') and major swap participants (''MSPs''). The terms ''SD'' and ''MSP'' as used in this final rule refer to the statutory definitions of such terms as defined in title VII of the Dodd-Frank Act, and as may be further defined by the Commission in a future final rulemaking. *See* section 721(b) of the Dodd-Frank Act, which provides that the Commission has the authority to adopt rules further defining any term in the CEA in a manner that is consistent with the Dodd-Frank Act. *See also* section 721(c) which provides that the Commission is required to adopt a rule to further define, inter alia, the terms ''swap dealer'' and ''major swap participant'' to include transactions and entities that have been structured to evade provisions in the Dodd-Frank Act.

[8] In a forthcoming release, the Commission plans to promulgate a new part 162, which provides privacy protections under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* (''FCRA'').

[9] This final rule incorporates technical revisions to its proposed amendments to add clarity. These revisions are not substantive and are not of the nature for which notice and comment must be provided under the Administrative Procedure Act. For example, in § 160.3(x)(7), the Commission deleted the language ''subject to the jurisdiction of the Commission'' after the term ''Any swap dealer,'' since the Commission believes that the inclusion of such language was redundant and unnecessary.

[10] In a forthcoming release titled ''Business Affiliate Marketing and Disposal of Consumer Information Rules,'' the Commission will adopt a new part 162 of its regulations.

of defined terms under § 160.3. Specifically, the Commission defines ''major swap participant'' to have the same meaning as in section 1a(33) of the CEA, as further defined by the Commission's regulations, and includes any person registered as such thereunder. The Commission defines ''swap dealer'' to have the same meaning as in section 1a(49) of the CEA, as further defined by the Commission's regulations, and includes any person registered as such thereunder.

There are existing definitions and related provisions under part 160 that are amended to include these new registrants. Specifically, the definitions of ''financial institution'', ''affiliate'', and ''you'' are amended to include swap dealers and major swap participants.

D. Section 160.15—Other Exceptions to Notice and Opt-out Requirements

As noted above, title X of the Dodd-Frank Act transferred certain authority from the FTC to the Bureau. Accordingly, the Commission is changing the reference from the FTC to the Bureau in § 160.15 to reflect that the Bureau is now a Federal functional regulator.

E. Section 160.17(b)—Relation to State Laws

Existing § 160.17(b) of the Commission's regulations clarifies the relationship of title V to state consumer protection laws. As a result of the creation of the Bureau and the transfer of certain authority from the FTC to the Bureau, the Commission proposed to amend § 160.17(b) by replacing it with the standard set out in section 1041(a)(2) of the Dodd-Frank Act. In the Commission's view, while the language of the standard in section 1041(a)(2) is structured slightly different from the existing standard in § 160.17(b), the Commission believed that the proposed language was nearly identical in substance to the current standard in § 160.17(b).

SIFMA commented that the standard for relation to state laws should be the same as the standard under section 507(b) of the GLB Act. SIFMA asserted that the appropriate standard should more closely follow section 507(b)—not section 1041 of the Dodd-Frank Act—because the former standard would achieve maximum consistency with the rules of the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Depository Insurance Corporation, the Office of Thrift Supervision, the National Credit Union Administration, and the Securities and Exchange Commission (collectively, the ''Agencies'') and would maintain the settled expectations of the market participants, which have complied with the standards of GLB Act for several years.

The Commission has carefully considered SIFMA's comment and has amended § 160.17(b) to use the language of section 507(b) of the GLB Act, as amended by section 1093(6) of the Dodd-Frank Act. The Commission recognizes that market participants are familiar with the standard in section 507(b) of the GLB Act, and therefore, changing the language of the standard ever so slightly from what is in section 507(b) may create unnecessary and unintended confusion.

F. Section 160.30—Procedures to Safeguard Customer Records and Information

Section 160.30 requires CFTC registrants to adopt policies and procedures that, among other things, address administrative, technical and physical safeguards for the protection of customer records and information. The Commission amends the introductory sentence of § 160.30 to add SDs and MSPs to the list of CFTC registrants that must comply with this requirement.

III. Effective Date

In the Proposal, the Commission proposed to adopt the amendments to part 160 on July 21, 2011, which coincides with the designated transfer date when various Federal agencies transfer their consumer protection authority to the Consumer Financial Protection Bureau pursuant to section 1100H of the Dodd-Frank Act.[11] In response to the proposed effective date, SIFMA expressed concern that this timeframe would not provide covered entities with a reasonable amount of time to address and implement the new rules. To address this concern, SIFMA requested that the Commission extend the effective date of the final rules to commence nine months from the date of the rules' publication in the **Federal Register** to ensure a reasonable time for compliance.

The Commission partly agrees with SIFMA's comment in that SDs and MSPs may need a reasonable amount of time to comply with the amendments to part 160 since these are two new types of Commission-regulated entities. The Commission, however, believes that nine months is more time than is necessary for these new regulated entities to comply with part 160. The Commission has decided to establish staggered compliance dates for its regulated entities that fall within the scope of part 160.[12] Specifically, with respect to those Commission-regulated entities that were previously complying with part 160—FCMs, IBs, CPOs, CTA, and RFEDs—the amendments to part 160 will not require that these entities materially alter their compliance programs. Accordingly, in the Commission's view, the appropriate compliance date for these entities is 120 days from the date of publication in the **Federal Register**. With respect to SDs and MSPs, the compliance date for these entities is 60 days from the date of publication of the Commission's final entities definitional rulemaking, which shall be published in the **Federal Register** at a date in the future.[13]

IV. Related Matters

A. Cost-Benefit Considerations.

Section 15(a) of the CEA explicitly requires the Commission to consider the costs and benefits of its actions before issuing a rule or order under the CEA. By its terms, section 15(a) neither requires the Commission to quantify the costs and benefits of amendments to regulations, nor does it require the Commission to determine whether the benefits of the amendments outweigh its costs. Section 15(a) specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular amendment is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Promulgated in 2001, part 160 of the Commission's regulations currently applies to several types of Commission-regulated entities, including FCMs, IBs, CTAs, CPOs and RFEDs. The Commission proposed and later promulgated the rules in part 160 in concert with the Agencies in order to broadly protect individual customers from all types of regulated businesses

[11] *See* 75 FR 57252–02, Sept. 20, 2010.

[12] The effective date of the amendments to part 160 shall be 60 days from the date of publication in the **Federal Register**.

[13] *See* the Commission's proposed entities definitional rulemaking at 75 FR 80174, Dec. 21, 2010.

(including businesses that are regulated with the Commission) that have access to nonpublic personal information. Part 160 imposes disclosure and procedural requirements that are either mandated by or fully consistent with the privacy provisions of the GLB Act and section 5g of the CEA.

The Dodd-Frank Act created two new entities over which the Commission has jurisdiction (*i.e.,* SDs and MSPs), and specifically mandated that the Commission has the authority to prescribe regulations as necessary to carry out the purposes of title V of the GLB Act for entities under its jurisdiction. In its Proposal, the Commission primarily sought to expand the scope of part 160 to cover these new entities because the Commission believes that, like FCMs, IBs, CTAs, CPOs and RFEDs, these new entities are more likely to have access to nonpublic personal information. The cost-benefit discussion in the Proposal analyzed the costs and benefits of extending the existing regulatory regime in part 160 to these new entities.

The Commission has considered the costs and benefits of the final rule in light of comments received and the specific areas of concern identified in section 15(a). An analysis of the section 15(a) factors is set out immediately below, followed by a discussion of the comments received in response to the Commission's cost-benefit discussion in the Proposal.

1. *Protection of market participants and the public.* The requirements to provide opt out notices and to protect customer information will benefit market participants and the public by protecting the privacy of their nonpublic personal information. The Commission believes that extending these requirements to SDs and MSPs will further ensure the protection of nonpublic personal information. The Commission further believes that the costs, which will be placed on these new entities will not exceed those costs currently placed on FCMs, IBs, CTAs, CPOs and RFEDs. In the Commission's view, SDs and MSPs will likely have similar resources and administrative infrastructure to comply with the part 160 requirements. Moreover, while these new entities will likely incur some incremental costs in complying with part 160, the privacy protection benefits that will accrue to the general public far outweigh those costs.

2. *Efficiency and competition.* The requirements to provide initial and annual privacy notices will benefit efficiency and competition by allowing customers to compare the privacy policies of financial institutions. The Commission's final rules also will benefit efficiency and competition by allowing SDs and MSPs flexibility to distribute notices and to adopt policies and procedures to protect customer information that are best suited to the institution's business and needs. As noted above, the Commission believes that the costs, which will be placed on these new entities will not exceed those costs currently placed on FCMs, IBs, CTAs, CPOs and RFEDs. Indeed, SDs and MSPs will likely have similar resources and administrative infrastructure to comply with the part 160 requirements.

3. *Price discovery and financial integrity of futures and swaps markets, price discovery and sound risk management practices.* The final rules should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function or financial integrity of the futures and swaps markets or on the risk management practices of SDs or MSPs.

4. *Other public interest considerations.* In the same manner that part 160 was designed to minimize the costs of compliance on FCMs, IBs, CTAs, CPOs and RFEDs, part 160 will similarly provide SDs and MSPs with maximum flexibility, consistent with legal requirements, to design their own compliance systems. Ultimately, the Commission believes that extending the scope of part 160 to SDs and MSPs will harmonize privacy protections for individual customers across the futures and swaps markets.

5. *Response to comments.* In its Proposal, the Commission solicited comment on its consideration of these costs and benefits. The Commission received one comment with respect to costs and benefits of the Proposal. Specifically, SIFMA argued that the Commission also should consider anticipated additional costs associated with monitoring the privacy and opt-out notice process, addressing consumer issues, and adjusting records to comport with consumer requests. SIFMA did not provide specific cost information to support its comments.

Despite SIFMA's argument that the Commission did not consider the additional costs identified above, there are several Commission-regulated entities that already comply with part 160, and the final rule simply extends this protection to new registrants, SDs and MSPs. As noted above, the Commission believes that the costs, which will be placed on these new entities will be no greater than those costs currently placed on FCMs, IBs, CTAs, CPOs and RFEDs. In the Commission's view, there is no reason why SDs and MSPs should be excluded from these requirements to the extent that they conduct business with a natural person. SDs and MSPs will likely have similar resources and administrative infrastructure to comply with the part 160 requirements. The additional costs that SIFMA raised (but did not articulate with specificity) were subsumed within the considerations discussed in the Proposal.[14]

In line with Section 15(a) of the CEA, the Commission believes that extending these provisions to SDs and MSPs is in the public interest and will further protect market the general public, promote efficiency and competition, and address other public interest considerations such as the harmonization of regulation across the futures and swaps markets. In the Commission's view, these benefits far outweigh the additional costs that SIFMA cited.

B. Paperwork Reduction Act.

This rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* the Commission submitted a copy of the Proposal to the Office of Management and Budget (''OMB'') for review. The Commission may not sponsor, and a person is not required to respond to an information collection unless it displays a currently valid OMB control number.

The final rule, affecting part 160, titled ''Privacy of Consumer Financial Information,'' OMB Control Number 3038–0055, expands the scope of this part to cover SDs and MSPs, two new classes of registrants, now subject to Commission jurisdiction. The final rule imposes mandatory requirements for these entities. SDs and MSPs must provide initial and annual privacy and opt-out notices to all customers that are natural persons.

In response to the Commission's request in the notice of proposed rulemaking for comments on any potential paperwork burden associated with this regulation, only one commenter provided a substantive comment addressing the merits of the Commission's proposed PRA calculations. In particular, SIFMA proposed that the burden estimate should be refined to reflect anticipated additional burden hours associated with monitoring the privacy and opt-out notice process, addressing consumer issues, and adjusting records to comport with consumer requests.

[14] *See* the Commission's cost-benefit discussion and Paperwork Reduction Act analysis at 75 FR at 66016–17.

Based on this comment, the Commission estimates that the approximately 300 SDs and MSPs may incur additional burden hours. Consequently, it is anticipated the 300 SDs and MSPs may incur an additional aggregate of 1440 burden hours than what was stated in the Proposal, monitoring an average of 20 notices per year, with an average monitoring time of .24 hours per notice. Accordingly, the Commission has submitted to the OMB an amended calculation of the annual burden hours for SDs and MSPs. OMB has approved a revision to Control Number 3038–0055 to cover the revision in the Commission's annual burden calculation.

C. Regulatory Flexibility Act.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* requires that Federal agencies consider whether their proposed regulations will have a significant economic impact on a substantial number of small entities. The rule amendments adopted herein now will affect SDs and MSPs, in addition to the certain Commission regulated entities that are currently subject to Commission's regulations under part 160. These regulations require periodic notice to be provided to individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions, and may be satisfied by the use of a model notice developed by the Commission and other regulatory agencies to minimize the burden of compliance. The Commission certified in the Proposal that these rules will not have a significant economic impact on a substantial number of small entities. Accordingly, because the Commission received no substantive comments from the public addressing the merits of the proposed rule, nothing alters the Commission's determination that the obligations created by these rule amendments will not create a significant economic impact on a substantial number of small entities.

D. Regulatory Text.

List of Subjects in 17 CFR Part 160

Brokers, Dealers, Consumer protection, Privacy, Reporting and recordkeeping requirements.

For the reasons articulated in the preamble, the Commission amends part 160 of title 17 of the Code of Federal Regulations as follows:

■ 1. The authority citation for part 160 is revised to read as follows:

Authority: 7 U.S.C. 7b–2 and 12a(5); 15 U.S.C 6801, *et seq.,* and sec. 1093, Pub. L. 111–203, 124 Stat. 1376.

■ 2. The heading for part 160 is revised to read as follows:

PART 160—PRIVACY OF CONSUMER FINANCIAL INFORMATION UNDER TITLE V OF THE GRAMM–LEACH–BLILEY ACT

■ 3. Amend section 160.1 by revising paragraph (b) to read as follows:

§ 160.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services primarily for business, commercial, or agricultural purposes. This part applies to all futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers that are subject to the jurisdiction of the Commission, regardless whether they are required to register with the Commission. These entities are hereinafter referred to in this part as ''you.'' This part does not apply to foreign (non-resident) futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers that are not registered with the Commission.

■ 4. Amend § 160.3 as follows:

■ a. Revise paragraphs (a), (n)(1)(i), (n)(1)(ii), and (o)(1)(i);

■ b. Redesignating paragraphs (w) and (x) as paragraphs (y) and (z);

■ c. Redesignating paragraphs (s) through (v) as paragraphs (t) through (w);

■ d. Adding new paragraphs (s) and (x);

■ e. Revising new designated paragraphs (y)(4) and (y)(5); and

■ f. Adding new paragraph (y)(6) and (7) to read as follows:

§ 160.3 Definitions.

* * * * *

(a) *Affiliate* of a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer means any company that controls, is controlled by, or is under common control with a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that is subject to the jurisdiction of the Commission. In addition, a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer subject to the jurisdiction of the Commission will be deemed an affiliate of a company for purposes of this part if:

(1) That company is regulated under title V of the GLB Act by the Bureau of Consumer Financial Protection or by a Federal functional regulator other than the Commission; and

(2) Rules adopted by the Bureau of Consumer Financial Protection or another Federal functional regulator under title V of the GLB Act treat the futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer as an affiliate of that company.

* * * * *

(n)(1) * * *

(i) Any futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that is registered with the Commission as such or is otherwise subject to the Commission's jurisdiction; and

* * * * *

(2) * * *

(i) Any person or entity, other than a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer that, with respect to any financial activity, is subject to the jurisdiction of the Commission under the Act.

* * * * *

(o)(1) * * *

(i) Any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, or swap dealer could offer that is subject to the Commission's jurisdiction; and

* * * * *

(s) *Major swap participant.* The term ''major swap participant'' has the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* as may be further defined by this title, and includes any person registered as such thereunder.

* * * * *

(x) *Swap dealer.* The term ''swap dealer'' has the same meaning as in section 1a(49) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* as may be further defined by this title, and includes any person registered as such thereunder.

* * * * *

(y) * * *

(4) Any commodity pool operator;

(5) Any introducing broker;

(6) Any major swap participant; and

(7) Any swap dealer.

* * * * *

■ 5. Revise § 160.15(a)(4) to read as follows:

§ 160.15 Other exceptions to notice and opt out requirements.

* * * * *

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, 12 U.S.C. 3401 *et seq.,* to law enforcement agencies (including a Federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a State insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Bureau of Consumer Financial Protection), self-regulatory organizations, or for an investigation on a matter related to public safety;

* * * * *

■ 6. Amend § 160.17 by revising paragraph (b) to read as follows:

§ 160.17 Relation to state laws.

* * * * *

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any person is greater than the protection provided under this part, as determined by the Bureau of Consumer Financial Protection, after consultation with the Commission, on its own motion or upon the petition of any interested party.

■ 7. Revise § 160.30 to read as follows:

§ 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant, and swap dealer subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information.

Issued in Washington, DC on July 7, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Privacy of Consumer Financial Information; Conforming Amendments Under Dodd-Frank Act—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to expand the scope of privacy protections for consumer financial information under the Gramm-Leach-Bliley Act. The rulemaking expands the scope of the Commission's existing privacy protections afforded to consumers' information—under the Commission's Part 160 rules—to swap dealers and major swap participants.

[FR Doc. 2011–17710 Filed 7–21–11; 8:45 am]

BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 162

RIN 3038–AD12

Business Affiliate Marketing and Disposal of Consumer Information Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission is adopting regulations to implement new statutory provisions enacted by title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act. These regulations apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, swap dealers and major swap participants. The Dodd-Frank Act provides the Commission with authority to implement regulations under sections 624 and 628 of the Fair Credit Reporting Act. The regulations implementing section 624 of the Fair Credit Reporting Act require CFTC-regulated entities to provide consumers with the opportunity to prohibit affiliates from using certain information to make marketing solicitations to consumers. The regulations implementing section 628 of the FCRA require CFTC-regulated entities that possess or maintain consumer report information in connection with their business activities to develop and implement written policies and procedures for the proper disposal of such information.

DATES: *Effective date:* September 20, 2011.

Compliance dates: Futures commission merchants, commodity pool operators, commodity trading advisors, introducing brokers, and retail foreign exchange dealers shall be in compliance with these rules not later than November 21, 2011. Swap dealers and major swap participants shall be in compliance with these rules not later than 60 days after the effective date of the final entities definition rulemaking, which the Commission will have published in the **Federal Register** at a future date.

FOR FURTHER INFORMATION CONTACT: Carl E. Kennedy, Counsel, (202) 418–6625, Commodity Futures Trading Commission, Office of the General Counsel, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, facsimile number (202) 418–5524, e-mail: *c_kennedy@cftc.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On October 27, 2010, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') proposed in the **Federal Register** the addition of a new part 162 to its Regulations (the ''Proposal'').[1] New part 162 was proposed to implement section 1088 of the Dodd-Frank Wall Street Reform and Consumer Protection Act[2] (''Dodd-

[1] *See* 75 FR 66018, Oct. 27, 2010.

[2] *See* the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov./LawRegulation/OTCDERIVATIVES/index.htm.*

Frank Act''), which sets out two amendments to the Fair Credit Reporting Act (''FCRA'')[3] and the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'').[4] As amended, the FCRA directs the Commission to promulgate regulations that are intended to provide privacy protections to certain consumer information held by any person that is subject to the enforcement jurisdiction of the Commission. One provision of section 1088 of the Dodd-Frank Act amends section 214(b) of the FACT Act—which added section 624 to the FCRA in 2003—and directs the Commission to implement the provisions of section 624 of the FCRA with respect to persons that are subject to the CFTC's enforcement jurisdiction. Section 624 of the FCRA gives consumers the right to prohibit certain CFTC-regulated entities[5] from using certain information obtained from an affiliate to make solicitations to that consumer (hereinafter referred in this preamble as the ''affiliate marketing rules''). Specifically, 17 CFR 162.3 establishes the basic rules governing the requirement to provide the consumer with notice, a reasonable opportunity and a simple method to opt out of a company's use of eligibility information that it obtains from an affiliate for the purpose of making solicitations to the consumer. This section and the affiliate marketing rule requirements are discussed in more detail below.

The other provision in section 1088 of the Dodd-Frank Act amends section 628 of the FCRA and mandates that the Commission implement regulations requiring persons subject to the CFTC's jurisdiction who possess or maintain consumer report information in connection with their business activities to properly dispose of that information (hereinafter referred to in this preamble as the ''disposal rules'').

Both sections 624 and 628 of the FCRA required various Federal agencies charged with regulating financial institutions in possession of consumer information to issue regulations in final form in consultation and coordination with each other. In particular, these sections required the Office of the Comptroller of the Currency (''OCC''), the Board of Governors of the Federal Reserve System (''Board''), the Federal Deposit Insurance Corporation (''FDIC''), the Office of Thrift Supervision (''OTS''), the National Credit Union Administration (''NCUA'') (collectively, the ''Banking Agencies''), the Securities and Exchange Commission (''SEC'') and the Federal Trade Commission (''FTC'') (the SEC, FTC and the Banking Agencies, are collectively, the ''Agencies'') in consultation and coordination with one another, to issue rules implementing these sections of the FCRA. The Agencies already have adopted final affiliate marketing rules and disposal rules.[6] The Commission, after consulting with many of the Agencies, is acting now pursuant to the Dodd-Frank Act to finalize and implement the affiliate marketing rules and disposal rules.

The 60-day public comment period on the Proposal expired on December 27, 2010.[7] In response to the Proposal, the Commission received a total of four comment letters.[8] Two of the four addressed the merits or substance of the Proposal.[9] Specifically, these comments addressed the following issues: (1) Consistency with the other Agencies' final regulations; (2) minor changes to the ''consumer'' definition; (3) correction of minor typographical errors; (4) the compliance date of the rules; and (5) consideration of additional burdens that Commission did not address in the Proposal's Paperwork Reduction Act and cost-benefit analyses.[10]

II. Rule Amendments

A. Affiliate Marketing Rules

Section 624 of the FCRA generally provides that a consumer can block certain CFTC-regulated entities from soliciting the consumer[11] based on eligibility information[12] that such registrant received from an affiliate[13] that has or previously had a pre-existing business relationship[14] with that

[3] *See* 15 U.S.C. 1681–1681x. The FCRA, enacted in 1970, sets standards for the collection, communication, and use of information bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is collected and communicated by consumer reporting agencies.

[4] *See* Public Law 108–159, Section 214, 117 Stat. 1952, 1980 (2003). The FACT Act was signed into law on December 4, 2003. The FACT Act amended the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, to allow consumers to exercise greater control regarding the type and amount of solicitations they receive, and to restrict the use and disclosure of sensitive medical information. A portion of section 214 of the FACT Act amended the FCRA to add section 624 to the FCRA.

[5] The CFTC-regulated entities that were covered in the Proposal included futures commission merchants (''FCMs''), retail foreign exchange dealers (''RFEDs''), commodity trading advisors (''CTAs''), commodity pool operators (''CPOs''), introducing brokers (''IBs''), swap dealers (''SDs''), or major swap participants (''MSPs''). Title VII of the Dodd-Frank Act created two new entities, which are subject to the jurisdiction of the Commission: SDs and MSPs. Section 162.2(n) of the Commission's regulations, 17 CFR 162.2(n), defines the term ''major swap participant'' to have the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.* (''CEA''), as may be further defined by the Commission's regulations, and includes any person registered as such thereunder. Section 162.2(r) of the Commission's regulations, 17 CFR 162.2(r), defines the term ''swap dealer'' to have the same meaning as in section 1a(49) of the CEA, as may be further defined by the Commission's regulations, and includes any person registered as such thereunder.

[6] For the disposal rules adopted by the various Federal agencies, *see* 69 FR 68690 (Nov. 24, 2004) (FTC); 69 FR 77610, Dec. 28, 2004 (Banking Agencies); 73 FR 13692, Mar. 13, 2008 (SEC). For the affiliate marketing rules adopted by the various Federal agencies, *see* 72 FR 61424, Oct. 31, 2007 (FTC); 72 FR 62910, Nov. 7, 2007 (Banking Agencies); 74 FR 58204, Sept. 10, 2009 (SEC).

[7] *See* 75 FR at 66019.

[8] Copies of these comment letters are available on the Commission's Web site at *http://www.cftc.gov.*

[9] The Securities Industry and Financial Markets Association (''SIFMA'') submitted a comment letter dated December 20, 2010 (the ''SIFMA letter''). The International Swaps and Derivatives Association (''ISDA'') and the Financial Services Roundtable (''FSR'') jointly submitted a comment letter dated December 27, 2010 (the ''ISDA/FSR letter''). As noted above, both letters are available on the Commission's Web site.

[10] The Commission also has made a few technical revisions to its final rules to add clarity. For example, in § 162.4(a)(2)(ii), the Commission revised two of the examples of what constitutes a continuing relationship with a covered affiliate. Specifically, the Commission revised these examples to demonstrate instances where an SD or MSP may have such a relationship, and where a swap transaction may evidence such a relationship.

[11] Proposed § 162.2(f) defined the term ''consumer'' to mean an individual person. This definition follows the statutory definition in section 603(c) of the FCRA. As was noted in the preamble to the Proposal, an individual acting through a legal representative qualifies as a consumer. The Commission is amending the definition in the final rule as described herein to address comments received in response to the Proposal.

[12] *See* 17 CFR 162.2(k), which defines the term ''eligibility information'' to mean any information that would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply. Examples of the type of information that would fall within the definition of ''eligibility information'' includes an affiliate's own transaction or experience information, such as information about a consumer's account history with that person, and other information, such as information from credit bureau reports or applications. The term ''eligibility information'' does not include aggregate or blind data that does not contain personal identifiers. Examples of personal identifiers include account numbers, names, or addresses, as well as Social Security numbers, driver's license numbers, telephone numbers, or other types of information that, depending on the circumstances or when used in combination, could identify the consumer.

[13] *See* 17 CFR 162.2(a), which defines ''affiliates'' to mean ''any person that is related by common ownership or common corporate control with a covered affiliate.''

[14] *See* 17 CFR 162.2(q), which defines the term ''pre-existing business relationship'' to mean a relationship between a person (or a person's licensed agent) and a consumer based on the following: (1) A financial contract between the person and the consumer that is in force on the date on which the consumer is sent a solicitation by this subpart; (2) the purchase, rental, or lease by the consumer of a person's financial products or services, or a financial transaction (including holding an active account or a policy in force or having another continuing relationship) between

consumer. To implement section 624 of the FCRA, § 162.3(a) establishes three conditions that must be met before a covered affiliate [15] that does not have a pre-existing business relationship with a consumer may use eligibility information to make a solicitation [16] to that consumer.[17] First, the rule provides that a notice must be clearly and conspicuously [18] disclosed to the consumer in writing or, if the consumer agrees, electronically, in a concise [19] notice that the covered affiliate that does not have a pre-existing business relationship may use shared eligibility information to make solicitations to the consumer.[20] Second, the consumer must be provided a reasonable opportunity and a reasonable and simple method to opt out of the use of that eligibility information to make solicitations to the consumer.[21] Third, the consumer must not have opted out.

As noted above, the Commission received specific comments regarding the definition of certain terms. In particular, the Securities Industry Financial Markets Association (''SIFMA'') suggested that the Commission amend the proposed definition of the term ''affiliate'' in order to make it conform to the Agencies' rules.[22] In the Proposal, the Commission defined ''affiliate'' as ''any company that is under common ownership or common corporate control.'' SIFMA suggested that the Commission change this definition by using the words ''related by'' rather than ''under.'' The Commission agrees that this change will further the goal of consistency with other Agencies' rules and has adopted this suggestion in its final rules.

In addition, SIFMA and, in a joint letter, the International Swaps and Derivatives Association (''ISDA'') and the Financial Services Roundtable (''FSR'') encouraged the Commission to revise the ''consumer'' definition to indicate that individuals who provide identifiable information for non-consumer purposes are not ''consumers.'' [23] Specifically, these commenters contend that the proposed definition is over-inclusive and as a result would include individuals such as market makers, individual floor brokers, locals, and others whose individually identifiable information may be collected in furtherance of market-related transactions for non-consumer purposes. These commenters recommend that the Commission employ a definition similar to that in title V of the Gramm-Leach-Bliley Act.[24] The Commission agrees that including such individuals could possibly be overreaching the intent of the FCRA, and has added a qualifying statement to the consumer definition which excludes from that definition persons who are ''market makers, floor brokers, locals, or individual persons whose information is not collected to determine eligibility for personal, family, or household purposes.''

With respect to several of the examples that the Commission set out in the Proposal's preamble and rule text for the affiliate marketing rules, SIFMA noted that the Commission's usage of examples in the Proposal were inconsistent with the usage of examples by other Agencies in their final rules.[25] In particular, SIFMA pointed out that, unlike the other Agencies' rules, the Proposal does not contain examples of ''solicitation,'' and does contain examples of ''eligibility information.'' SIFMA suggested that, to ''maximize [the final rules'] benefit and promote consistency,'' the Commission revise the affiliate marketing rules to follow the Agencies' usage of examples in their final affiliate marketing rules. That is, when the Agencies have included examples in the text of the rules, the Commission should incorporate examples into its final rules, and vice versa. In addition, SIFMA asked the Commission to indicate that the examples are merely illustrative of acceptable practices and are not prescriptive. Lastly, SIFMA asked the Commission to make clear that examples and practices developed in connection with the analogues rules of the Agencies should be considered as potential guidance for the Commission's rule.

Despite SIFMA's comments, the Commission does not believe that the inclusion or exclusion of examples warrants an interpretation of the Commission's final affiliate marketing rules that is different than the interpretation of the Agencies' final affiliate marketing rules. The Commission has chosen a slightly different approach than the Agencies in terms of its usage of examples. This approach should not be read to suggest that the Commission intended a different interpretation of its rules. Indeed, the Commission has included examples where it believes they will be illustrative, and does not believe that these examples should be read as prescriptive. Lastly, the Commission has decided not to include a statement to the effect that the examples in the Agencies' rules should be considered as guidance with respect to the Commission's rule. The Agencies' examples are directed at their registrants; the Commission's examples are directed at its registrants. Again, these differences should not be interpreted to suggest that the Commission's rule is different.

SIFMA also pointed out two typographical errors which the Commission has corrected in the final

the consumer and the person, during the 18-month period immediately preceding the date on which a solicitation covered by this subpart is sent to the consumer; or (3) an inquiry or application by the consumer regarding a financial product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this subpart.

[15] *See* 17 CFR 162.2(h), which defines the term ''covered affiliate'' to mean an FCM, RFED, CTA, CPO, IB, SD, or MSP, which is subject to the jurisdiction of the Commission.

[16] *See* 17 CFR 162.2(r), which defines the term ''solicitation'' to mean the marketing of a financial product or service initiated by a covered affiliate to a particular consumer that is based on eligibility information communicated to the covered affiliate by its affiliate and is intended to encourage the consumer to purchase the covered affiliate's financial product or service. A communication, such as a telemarketing solicitation, direct mail, or e-mail, is a solicitation if it is directed to a specific consumer based on eligibility information. The definition of solicitation does not, however, include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase financial products and services from the person initiating the communications.

[17] Section 162.3(d) of the Commission's regulations sets forth when a covered affiliate makes a solicitation to a consumer.

[18] *See* 17 CFR 162.2(b), which defines the term ''clear and conspicuous'' to mean reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice.

[19] *See* 17 CFR 162.2(h), which defines the term ''concise'' to mean a reasonably brief expression or statement.

[20] Section 162.3(b) of the Commission's regulations, 17 CFR 162.3(b), identifies the parties who are responsible to provide the notice as either: (1) The affiliate with a pre-existing business relationship to report the initial opt-out notice directly to the consumer; or (2) one or more of affiliates to provide a joint notice to the consumer, provided that at least one of the affiliates has or previously had the pre-existing business relationship with the consumer.

Section 162.4(b) provides that an opt-out election must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out election in writing or, if the consumer agrees, electronically.

[21] Section 162.6(a) of the Commission's regulations, 17 CFR 162.6(a), sets forth the general rule prohibiting covered affiliates from using eligibility information about a consumer unless the consumer is provided a reasonable opportunity to opt out, as required by the proposed regulation. Section 162.7(b) sets forth reasonable and simple methods of opting out.

[22] *See* the SIFMA letter at 3.

[23] *See* the SIFMA letter at 4 and the ISDA/FSR letter at 2.

[24] *See* 15 U.S.C. 6809(9).

[25] See the SIFMA letter at 5.

rules.[26] These corrections were (1) changing the word ''market'' to ''marketing'' in § 162.3(a)(2); and (2) changing the word ''includes'' to ''include'' in § 162.2(k).

B. Disposal Rules

Section 1088 of the Dodd-Frank Act also amends section 628 of the FCRA, which directs the Commission to adopt comparable and consistent rules with the Agencies regarding the disposal of sensitive consumer information. The purpose of these rules is to reduce the risk of identity theft and other consumer harm from improper disposal of a consumer report or any record derived from one. The Commission's disposal rules[27] apply to certain Commission-regulated entities[28] that, for a business purpose, maintain or otherwise possess such consumer information.[29]

The general disposal requirement in § 162.21(a), 17 CFR 162.21, provides that Commission-regulated entities adopt reasonable, written policies and procedures that address the administrative, technical, and physical safeguards for the protection of consumer information.

A commenter suggested that the Commission remove language from the text of the Proposal, which requires disposal to take place ''pursuant to a written disposal plan.'' The commenter suggested that such language would be duplicative and possibly confusing because the Proposal already required ''written policies and procedures'' for disposal. The commenter suggested that the removal of this language would further the conformity of this rule with the other Agencies' rules. The Commission agrees and has removed the requirement that disposal take place ''pursuant to a written disposal plan'' from the final rule text.

The standard for disposal is flexible to allow these entities to determine what measures are reasonable based on the sensitivity of the information, the costs and benefits of different disposal methods, and relevant changes in technology over time.

C. Compliance Dates

In the Proposal, the Commission proposed to adopt part 162 on July 21, which was intended to coincide with the proposed effective date of the Commission's amendments to part 160 of its regulations.[30] SIFMA requested that the Commission extend the effective date of the disposal and affiliate marketing rules from July 21, 2011 to nine months after the date of publication.[31] SIFMA argued that this would allow the covered entities enough time to come into compliance with the rules.

The Commission partly agrees with SIFMA's comment with respect to the new entities (*i.e.,* SDs and MSPs) that must comply with the final rules. The effective date of the final rules will be 60 days from the date of publication in the **Federal Register**. However, with respect to FCMs, IBs, CTAs, CPOs, and RFEDs, the Commission has decided to establish a compliance date of 120 days after the date of publication in the **Federal Register**. In making its decision, the Commission considered the amount of time that the other Agencies' final rules gave to affected entities in order to comply with their respective rules. These Agencies gave their affected entities 120 months to comply with the provision of their respective rules. In addition, the Commission considered the fact that many of its regulated entities are currently required to adhere to the FTC's disposal and affiliate marketing rules which are substantially identical.

With respect to SDs and MSPs, the Commission has determined that these new entities shall have 60 days after the date of publication in the **Federal Register** of the final entities definitional rulemaking[32] to come into compliance with these rules. The Commission expects to approve and publish in the **Federal Register** the final entities definitional rulemaking at a date in the future.

II. Cost-Benefit Considerations.

Section 15(a) of the CEA explicitly requires the Commission to consider the costs and benefits of its actions before issuing a rule or order under the CEA. By its terms, section 15(a) neither requires the Commission to quantify the costs and benefits of amendments to regulations, nor does it require the Commission to determine whether the benefits of the amendments outweigh its costs. Section 15(a) specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular amendment is necessary or appropriate to protect the public interest or to effectuate any of the provisions or accomplish any of the purposes of the CEA.

Section 1088 of the Dodd-Frank Act provides the Commission with authority to implement rules under sections 624 and 628 of the FCRA. In its Proposal, the Commission prescribed rules implementing section 624 of the FCRA, which requires certain Commission-regulated entities to provide consumers with the opportunity to prohibit affiliates from using certain information to make marketing solicitations to consumers. The Commission also prescribed rules implementing section 628 of the FCRA, which requires certain Commission-regulated entities that possess or maintain consumer report information in connection with their business activities to develop and implement written policies and procedures for the proper disposal of such information. These proposed regulations would require CFTC registrants to do two things with respect to certain consumer information. The Commission proposed to (1) create a new part 162 of its regulations to include both the business affiliate rules

[26] *See* the SIFMA letter at 4–5.

[27] *See* 17 CFR 162.2(i), which defines the terms ''dispose'' or ''disposal'' to mean the discarding or abandonment of consumer information or the sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored. The Proposal noted that the sale, donation, or transfer, as opposed to the discarding or abandonment, of consumer information would not be considered ''disposal'' under this definition. For example, an entity subject to the disposal rule that transfers consumer report information to a third party for marketing purposes would not be discarding the information for the purposes of the disposal rule. If the entity sells computer equipment on which consumer report information is stored, however, the sale would be considered disposal. This definition is wholly consistent with the definition of ''dispose'' or ''disposal'' in the Agencies' final disposal rules. For those reasons, the Commission adopts this definition as proposed.

[28] Like the affiliate marketing rules, the types of Commission-regulated entities that are subject to the disposal rules are FCMs, RFEDs, CTAs, CPOs, IBs, SDs, and MSPs.

[29] *See* 17 CFR 162.2(g), which defines the term ''consumer information'' to mean any record about an individual, whether in paper, electronic, or other form that is a consumer report or is derived from a consumer report (as defined section 603(d)(1) of the FCRA). Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

[30] *See* 75 FR 66014, Oct. 27, 2010. The effective date of the part 160 conforming amendments rulemaking was intended to follow the designated transfer date when various Federal agencies transfer their consumer protection authority to the Consumer Financial Protection Bureau pursuant to section 1100H of the Dodd-Frank Act.

[31] *See* the SIFMA letter at 6.

[32] *See* the Commission's proposed entities definitional rulemaking at 75 FR 80174, Dec. 21, 2010.

and the disposal rules and (2) require that this new part apply to the following Commission-regulated entities: FCMs; IBs; CTAs; CPOs; RFEDs; SDs; and MSPs.

The cost-benefit discussion in the Proposal analyzed the costs and benefits of imposing new part 162 on these entities, most of which currently comply with substantially identical regulations imposed by the Agencies. With respect to costs, the Commission's Proposal stated that the costs to aforementioned entities would be de minimis because: (1) The Commission is providing model notices in the proposed regulations in order to assist these participants in complying with the affiliate marketing rules; (2) the affiliate marketing rules only require periodic notice (*i.e.*, at a maximum, companies would have to provide notice to a consumer once every five years; at a minimum, companies would have to provide notice only once per consumer); (3) market participants can file consolidated and equivalent notices in order to comply with the affiliate marketing rules; and (4) the disposal rules were designed to provide market participants with the greatest flexibility in the development and implementation of a disposal program (which may vary according to a company's size and the complexity of its operations, the costs and benefits of available disposal methods, and the sensitivity of information involved).

The Commission's Proposal also set out the following potential costs to the general public: (1) Absent the implementation of the affiliate marketing rules, consumers would have no control over both the use of their personal information, and the number of solicitations such consumers would receive from affiliates of company with which they have a pre-existing business relationship; and (2) absent the implementation of the disposal rules, there would be an increased chance that consumer information would be accessible to third parties who may use such information for identity theft or other unlawful purposes. With respect to benefits, the Commission's Proposal stated that, through the implementation of the affiliate marketing rules, consumers generally will be able to opt out of receiving unsolicited and targeted materials from businesses with which the consumers have no pre-existing business relationship. In addition, the Commission's Proposal stated that, as a result of the implementation of the disposal rules, the potential for the misuse of consumer information will greatly decrease.

In issuing final rules, the Commission has considered the costs and benefits referenced above in light of the comments received in response to its Proposal and the specific areas of concern identified in section 15(a). An analysis of the section 15(a) factors is set out immediately below, followed by a discussion of the comments received in response to the Commission's cost-benefit discussion in its Proposal.

1. *Protection of market participants and the public.* The Commission believes that requiring certain Commission-regulated entities to provide opt-out notices and to protect customer information through disposal of such information will greatly benefit the general public by protecting the privacy of the public's personal information. Similarly, the Commission believes that requiring Commission-regulated entities to ensure the protection of nonpublic personal information will reduce the litigation risk that these entities face related to privacy causes of action. The Commission further believes that the costs, which will be placed on its regulated entities, will be equal to or no greater than those costs that the Agencies currently impose on most of these entities under the Agencies' similar regulations.[33]

2. *Efficiency and competition.* The Commission believes that the requirements to provide opt-out notices will benefit efficiency by reducing the number of solicitations sent to customers. The Commission's final rules also will benefit efficiency and competition by providing Commission-regulated entities with flexibility in terms of how best to distribute opt-out notices and to adopt disposal policies and procedures to protect customer information. Ultimately, this flexibility will allow these entities to develop procedures that are best suited to each entity's business and needs. As noted above, the Commission believes that the costs, which will be placed on these entities will be equal to or no greater than those costs currently placed on them under the Agencies' similar regulations.

3. *Price discovery and financial integrity of futures and swaps markets, price discovery and sound risk management practices.* The final rules should have no effect, from the standpoint of imposing costs or creating benefits, on the price discovery function or financial integrity of the futures and swaps markets or on the risk management practices of the Commission-regulated entities.

4. *Other public interest considerations.* As noted above, part 162 will provide these entities with maximum flexibility in designing their own compliance systems in a manner consistent with the legal requirements under the affiliate marketing rules and disposal rules. Ultimately, the Commission believes that requiring its entities to comply with the final affiliate marketing rules and disposal rules will harmonize privacy protections for individual customers across all financial markets regardless of whether those entities are regulated by the Commission or the other Agencies.

5. *Response to Comments.* In its Proposal, the Commission solicited comment on its consideration of these costs and benefits. The Commission received one comment with respect to the cost and benefits analysis in its Proposal. Specifically, SIFMA argued that the Commission also should consider anticipated additional costs associated with monitoring the privacy and opt-out notice process, addressing consumer issues, and adjusting records to comport with consumer requests. SIFMA did not provide specific cost information related to these additional activities. Notwithstanding SIFMA's assertion, the Commission notes that the additional activities and costs raised by SIFMA were subsumed within the considerations discussed in the Proposal.[34]

In line with Section 15(a) of the CEA, the Commission believes that prescribing final rules is in the public interest and will further protect market the general public, promote efficiency and competition, and address other public interest considerations such as the harmonization of regulation across financial markets, regardless of which Federal regulator oversees a financial entity. In the Commission's view, these benefits far outweigh the additional costs that SIFMA cited.

III. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control

[33] The Commission acknowledges that there will likely be an incremental cost in the aggregate in respect of those entities who do not currently comply with the Agencies' similar regulations. The Commission believes that this incremental cost, however, is outweighed by the benefits that will accrue to the general public in terms of the privacy protections that will be afforded to their personal information.

[34] *See* the Commission's cost-benefit discussion and Paperwork Reduction Act analysis at 75 FR at 66030–31.

number. The Commission's final rule regarding the protection of consumer information under the Fair Credit Reporting Act results in information collection requirements within the meaning of the PRA. The Commission submitted the proposing release along with supporting documentation to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The Commission requested that OMB approve and assign a new control number for the collection of information required by the proposing release.

In response to the Commission's request in the proposing release for comments on any potential paperwork burden associated with both the proposed affiliate marketing and disposal rules, only SIFMA provided substantive comments addressing the merits of the Commission's proposed PRA calculations.[35] In particular, SIFMA proposed that the burden estimate for the affiliate marketing rules should be refined to account for burden hours associated with: (i) Monitoring the opt-out notice process; (ii) addressing consumer questions and concerns about opt-out notices; and (iii) adjusting records where a consumer changes his or her mind about his or her election to opt-in or out. In addition, SIFMA proposed that the burden estimate for the disposal rules should be refined to: (i) Revise disposal plans to account for use of new technology, new business processes, etc.; and (ii) conduct regular reviews of its disposal plan to determine when revisions are necessary or advisable.

Based on these comments, the Commission estimates that 3,172 covered entities may incur an additional 3.5 burden hours when complying with the affiliate marketing rules, for an aggregate of 11,102 annual burden hours. These additional burden hours are attributable to monitoring the opt-out notice process, addressing consumer questions and concerns about opt-out notices, and adjusting customer records.

In addition, the Commission estimates that 3,172 covered entities may incur an additional 2.4 burden hours when complying with the disposal rules, for an aggregate of 7,612.8 annual burden hours. These additional burden hours are attributable to revise and update disposal plans on an ongoing basis, and conduct regular reviews of its disposal plan as necessary or advisable. Accordingly, the Commission has submitted to the OMB an amended calculation of the annual burden hours for the final affiliate marketing and disposal rules.

[35] *See* the SIFMA letter at 4–5.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[36] requires that Federal agencies consider whether the regulations they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[37] The Commission's final regulations will affect only FCMs, IBs, CTAs, CPOs, SDs, and MSPs.

The regulations implementing section 624 of the FCRA require above-referenced CFTC-regulated entities to provide consumers with the opportunity to prohibit affiliates from using certain information to make marketing solicitations to consumers. The regulations implementing section 628 of the FCRA require the above-referenced CFTC-regulated entities that possess or maintain consumer report information in connection with their business activities to develop and implement a written program for the proper disposal of such information. The Commission certified in the Proposal that these rules will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any substantive comments to its RFA analysis in relation to the Proposal. Moreover, the Commission previously determined that FCMs, CPOs, and IBs are not small entities for purposes of the RFA.[38] Therefore, nothing alters the Commission's determination in the Proposal that the obligations created by these rules will not create a significant economic impact on a substantial number of small entities.

[36] 5 U.S.C. 601 *et seq.*

[37] 5 U.S.C. 601 *et seq.*

[38] Previous determinations for FCMs at 47 FR 18618, 18619, Apr. 30, 1982; CPOs at 47 FR 18618, 18619, Apr. 30, 1982; and IBs at 48 FR 14933, 14955, Apr. 6, 1983.

V. Text of Final Rules

List of Subjects in 17 CFR Part 162

Brokers, Dealers, Consumer protection, Privacy, Reporting and recordkeeping.

For the reasons stated in the preamble, the Commodity Futures Trading Commission adds 17 CFR part 162 to read as follows:

PART 162—PROTECTION OF CONSUMER INFORMATION UNDER THE FAIR CREDIT REPORTING ACT

Sec.
162.1 Purpose and scope.
162.2 Definitions.

Subpart A—Business Affiliate Marketing Rules

162.3 Affiliate marketing opt out and exceptions.
162.4 Scope and duration of opt out.
162.5 Contents of opt-out notice; consolidated and equivalent notices.
162.6 Reasonable opportunity to opt out.
162.7 Reasonable and simple methods of opting out.
162.8 Acceptable delivery of opt-out notices
162.9 Renewal of opt out.
162.10–162.20 [Reserved.]

Subpart B—Disposal Rules

162.21 Proper disposal of consumer information.
Appendix A to Part 162—Sample Clauses

Authority: Sec. 1088, Pub. L. 111–203; 124 Stat. 1376 (2010).

§ 162.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement various provisions in the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* (''FCRA''), which provide certain protections to consumer information.

(b) *Scope.* This part applies to certain consumer information held by the entities listed below. This part shall apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers, regardless of whether they are required to register with the Commission. This part does not apply to foreign futures commission merchants, foreign retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers unless such entity registers with the Commission. Nothing in this part modifies limits or supersedes the requirements set forth in part 160 of this title.

(c) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a section illustrate only the issue described in the section and do not illustrate any other issue that may arise in this part.

§ 162.2 Definitions.

(a) *Affiliate.* The term ''affiliate'' for the purposes of this part means any person that is related by common ownership or common corporate control with a covered affiliate.

(b) *Clear and conspicuous.* The term ''clear and conspicuous'' means reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice.

(c) *Common ownership or common corporate control.* The term ''common ownership or common corporate control'' for the purposes of this part means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of a company will be presumed not to control the company.

(d) *Company.* The term ''company'' means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Concise.*—

(1) *In general.* The term ''concise'' means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(f) *Consumer.* Except as otherwise provided, the term ''consumer'' means an individual person. The term consumer does not include market makers, floor brokers, locals, or individual persons whose information is not collected to determine eligibility for personal, family, or household purposes.

(g) *Consumer information.* The term ''consumer information'' means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report (as defined in section 603(d)(2) of the FCRA). Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(h) *Covered affiliate.* The term ''covered affiliate'' means a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer, which is subject to the jurisdiction of the Commission.

(i) *Dispose or Disposal.*—

(1) *In general.* The terms ''dispose'' or ''disposal'' means:

(i) The discarding or abandonment of consumer information; or

(ii) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

(2) *Sale, donation, or transfer of consumer information.* The sale, donation, or transfer of consumer information is not considered disposal for the purposes of subpart B.

(j) *Dodd-Frank Act.* The term ''Dodd-Frank Act'' means the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376 (2010)).

(k) *Eligibility information.* The term ''eligibility information'' means any information that would be a consumer report if the exclusions from the definition of ''consumer report'' in section 603(d)(2)(A) of the FCRA did not apply. Examples of the type of information that would fall within the definition of eligibility information include an affiliate's own transaction or experience information, such as information about a consumer's account history with that affiliate, and other information, such as information from credit bureau reports or applications. Eligibility information does not include aggregate or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(l) *FCRA.* The term ''FCRA'' means the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*).

(m) *Financial product or service.* The term ''financial product or service'' means any product or service that a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer could offer that is subject to the Commission's jurisdiction.

(n) *GLB Act.* The term ''GLB Act'' means the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1338 (1999)).

(o) *Major swap participant.* The term ''major swap participant'' has the same meaning as in section 1a(33) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* as may be further defined by this title, and includes any person registered as such thereunder.

(p) *Person.* The term ''person'' means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

(q) *Pre-existing business relationship.* The term ''pre-existing business relationship'' means a relationship between a person, or a person's licensed agent, and a consumer based on—

(1) A financial contract between the person and the consumer which is in force on the date on which the consumer is sent a solicitation by this part;

(2) The purchase, rental, or lease by the consumer of a persons' services or a financial transaction (including holding an active account or policy in force or having another continuing relationship) between the consumer and the person, during the 18-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part; or

(3) An inquiry or application by the consumer regarding a financial product or service offered by that person during the three-month period immediately preceding the date on which the consumer is sent a solicitation covered by this part.

(r) *Solicitation*—(1) *In general.* The term ''solicitation'' means the marketing of a financial product or service initiated by an affiliate to a particular consumer that is—

(i) Based on eligibility information communicated to that covered affiliate by an affiliate that has or previously had the pre-existing business relationship with a consumer as described in this part; and

(ii) Intended to encourage the consumer to purchase or obtain such financial product or service. A solicitation does not include marketing communications that are directed at the general public.

(2) *Examples.* Examples of what communications constitute solicitations include communications such as a telemarketing solicitation, direct mail, or e-mail, when those communications are directed to a specific consumer based on eligibility information. A solicitation does not include communications that are directed at the general public without regard to eligibility information, even if those communications are intended to encourage consumers to purchase financial products and services from the affiliate initiating the communications.

(s) *Swap dealer.* The term ''swap dealer'' has the same meaning as in section 1a(49) of the Commodity Exchange Act, 7 U.S.C. 1 *et seq.,* as may be further defined by this title, and includes any person registered as such thereunder.

Subpart A—Business Affiliate Marketing Rules

§ 162.3 Affiliate marketing opt out and exceptions.

(a) *Initial notice and opt out.* A covered affiliate may not use eligibility information about a consumer that the covered affiliate receives from an affiliate with the consumer to make a

solicitation for marketing purposes to such consumer unless—

(1) It is clearly and conspicuously disclosed to the consumer in writing or if the consumer agrees, electronically, in a concise notice that the person may use shared eligibility information about that consumer received from an affiliate to make solicitations for marketing purposes to such consumer;

(2) The consumer is provided a reasonable opportunity and a reasonable and simple method to opt out, or prohibit the covered affiliate from using eligibility information to make solicitations for marketing purposes to the consumer; and

(3) The consumer has not opted out.

(b) *Persons responsible for satisfying the notice requirement.* The notice required by this section must be provided:

(1) By an affiliate that has or previously had a pre-existing business relationship with a consumer; or

(2) As part of a joint notice from two or more members of an affiliated group of companies, provided that at least one of the affiliates on the joint notice has or previously had a pre-existing business relationship with the consumer.

(c) *Exceptions.* These proposed regulations would not apply to the following covered affiliate:

(1) A covered affiliate that has a pre-existing business relationship with a consumer;

(2) Communications between an employer and employee-consumer (or his or her beneficiary) in connection with an employee benefit plan;

(3) A covered affiliate that is currently providing services to the consumer;

(4) If the consumer initiated the communication with the covered affiliate by oral, electronic, or written means;

(5) If the consumer authorized or requested the covered affiliate's solicitation; or

(6) If compliance by a person with these regulations would prevent that person's compliance with state insurance laws pertaining to unfair discrimination.

(d) *Making solicitations.*

(1) *When a solicitation occurs.* A covered affiliate makes a solicitation for marketing purposes if the person—

(i) Receives eligibility information from an affiliate;

(ii) Uses that eligibility information to do one or more of the following:

(A) Identify the consumer or type of consumer to receive a solicitation;

(B) Establish criteria used to select the consumer to receive a solicitation about the covered affiliate's financial products or services; or

(C) Decide which of the services or contracts to market to the consumer or tailor the solicitation to that consumer; and

(iii) As a result of the covered affiliate's use of the eligibility information, the consumer is provided a solicitation.

(2) *Receipt of eligibility information.* A covered affiliate may receive eligibility information from an affiliate in various ways, including when the affiliate places that information into a common database that the covered affiliate may access.

(3) *Service Providers.* Except as provided in paragraph (d)(5) of this section, a covered affiliate receives or uses an affiliate's eligibility information if a service provider acting on the covered affiliate's behalf (regardless of whether such service provider is a third party or an affiliate of the covered affiliate) receives or uses that information in the manner described in paragraph (d)(1)(i) or (d)(1)(ii) of this section. All relevant facts and circumstances will determine whether a service provider is acting on behalf of a covered affiliate when it receives or uses an affiliate's eligibility information in connection with marketing the covered affiliate's financial products or services.

(4) *Use by an affiliate of its own eligibility information.* Unless a covered affiliate uses eligibility information that the covered affiliate receives from an affiliate in the manner described in paragraph (d)(2) of this section, the covered affiliate does not make a solicitation subject to this subpart:

(i) Uses its own eligibility information that it obtained in connection with a pre-existing business relationship it has or previously had with the consumer to market the covered affiliate's financial products or services to the consumer; or

(ii) Directs its service provider to use the affiliate's own eligibility information that it obtained in connection with a pre-existing business relationship it has or previously had with the consumer to market the covered affiliate's financial products or services to the consumer, and the covered affiliate does not communicate directly with the service provider regarding that use.

(5) *Use of eligibility information by a service provider.* (i) *In general.* A covered affiliate does not make a solicitation subject to this subpart if a service provider (including an affiliated or third-party service provider that maintains or accesses a common database that the covered affiliate may access) receives eligibility information from an affiliate that has or previously had a pre-existing business relationship with the consumer and uses that eligibility information to market the covered affiliate's financial products or services to the consumer, so long as—

(A) The affiliate controls access to and use of its eligibility information by the service provider (including the right to establish the specific terms and conditions under which the service provider may use such information to market the covered affiliate's financial products or services);

(B) The affiliate establishes specific terms and conditions under which the service provider may access and use such affiliate's eligibility information to market the covered affiliate's financial products and services (or those of affiliates generally) to the consumer, such as the identity of the affiliated companies whose financial products or services may be marketed to the consumer by the service provider, the types of financial products or services of affiliated companies that may be marketed, and the number of times the consumer may receive marketing materials, and periodically evaluates the service provider's compliance with those terms and conditions;

(C) The affiliate requires the service provider to implement reasonable policies and procedures designed to ensure that the service provider uses such affiliate's eligibility information in accordance with the terms and conditions established by such affiliate relating to the marketing of the covered affiliate's financial products or services;

(D) The affiliate is identified on or with the marketing materials provided to the consumer; and

(E) The covered affiliate does not directly use its affiliate's eligibility information in the manner described in paragraph (b)(1)(ii) of this section.

(ii) *Writing requirements.* (A) The requirements of paragraphs (b)(5)(i)(A) and (C) of this section must be set forth in a written agreement between the affiliate that has or previously had a pre-existing business relationship with the consumer and the service provider; and

(B) The specific terms and conditions established by the affiliate as provided in paragraph (b)(5)(i)(B) of this section must be set forth in writing.

(e) *Relation to affiliate-sharing notice and opt out.* Nothing in this rulemaking will limit the responsibility of a covered affiliate to comply with the notice and opt-out provisions under other privacy rules under the FCRA, the GLB Act or the CEA.

§ 162.4 Scope and duration of opt out.

(a) *Scope of opt-out election*-(1) *In general.* The consumer's election to opt out prohibits any covered affiliate subject to the scope of the opt-out notice

from using eligibility information received from another affiliate to make solicitations to the consumer.

(2) *Continuing relationship*-(i) *In general.* If the consumer establishes a continuing relationship with a covered affiliate or its affiliate, an opt-out notice may apply to eligibility information obtained in connection with—

(A) A single continuing relationship or multiple continuing relationships that the consumer establishes with a covered affiliate or its affiliates, including continuing relationships established subsequent to delivery of the opt-out notice, so long as the notice adequately describes the continuing relationships covered by the opt out; or

(B) Any other transaction between the consumer and the covered affiliate or its affiliates as described in the notice.

(ii) *Examples of a continuing relationship.* A consumer has a continuing relationship with a covered affiliate or its affiliate if:

(A) The covered affiliate is a futures commission merchant through whom a consumer has opened an account, or that carries the consumer's account on a fully-disclosed basis, or that effects or engages in commodity interest transactions with or for a consumer, even if the covered affiliate does not hold any assets of the consumer;

(B) The covered affiliate is an introducing broker that solicits or accepts specific orders for trades;

(C) The covered affiliate is a commodity trading advisor with whom a consumer has a contract or subscription, either written or oral, regardless of whether the advice is standardized, or is based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of the particular consumer;

(D) The covered affiliate is a commodity pool operator, and accepts or receives from the consumer, funds, securities, or property for the purpose of purchasing an interest in a commodity pool;

(E) The covered affiliate is a major swap participant that holds securities or other assets as collateral for a loan made to the consumer, even if the covered affiliate did not make the loan or do not affect any transactions on behalf of the consumer; or

(F) The covered affiliate is a swap dealer that regularly effects or engages in swap transactions with or for a consumer even if the covered affiliate does not hold any assets of the consumer.

(3) *No continuing relationship.* (i) *In general.* If there is no continuing relationship between a consumer and the covered affiliate or its affiliate, and the covered affiliate or its affiliate obtain eligibility information about a consumer in connection with a transaction with the consumer, such as an isolated transaction or a credit application that is denied, an opt-out notice provided to the consumer only applies to eligibility information obtained in connection with that transaction.

(ii) *Examples of no continuing relationship.* A consumer does not have a continuing relationship with a covered affiliate or its affiliate if:

(A) The covered affiliate has acted solely as a ''finder'' for a futures commission merchant, and the covered affiliate does not solicit or accept specific orders for trades; or

(B) The covered affiliate has solicited the consumer to participate in a pool or to direct his or her account and he or she has not provided the covered affiliate with funds to participate in a pool or entered into any agreement with the covered affiliate to direct his or her account.

(4) *Menu of alternatives.* A consumer may be given the opportunity to choose from a menu of alternatives when electing to prohibit solicitations, such as by electing to prohibit solicitations from certain types of affiliates covered by the opt-out notice but not other types of affiliates covered by the notice, electing to prohibit solicitations based on certain types of eligibility information but not other types of eligibility information, or electing to prohibit solicitations by certain methods of delivery but not other methods of delivery. However, one of the alternatives must allow the consumer to prohibit all solicitations from all of the affiliates that are covered by the notice.

(5) *Special rule for a notice following termination of all continuing relationships.* A consumer must be given a new opt-out notice if, after all continuing relationships with the covered affiliate or its affiliate(s) are terminated, the consumer subsequently establishes another continuing relationship with the covered affiliate or its affiliate(s) and the consumer's eligibility information is to be used to make a solicitation. The new opt-out notice must apply, at a minimum, to eligibility information obtained in connection with the new continuing relationship. Consistent with paragraph b of this section, the consumer's decision not to opt out after receiving the new opt-out notice would not override a prior opt-out election by the consumer that applies to eligibility information obtained in connection with a terminated relationship, regardless of whether the new opt-out notice applies to eligibility information obtained in connection with the terminated relationship.

(b) *Duration of opt-out election.* An opt-out election must be effective for a period of at least five years beginning when the consumer's opt-out election is received and implemented, unless the consumer subsequently revokes the opt-out election in writing or, if the consumer agrees, electronically. An opt-out election may be established for a period of more than five years or for an indefinite period unless revoked.

(c) *Time period in which a consumer can opt out.* A consumer may opt out at any time.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before expiration of the opt-out period, even if the consumer does not renew the opt out.

§ 162.5 Contents of opt-out notice; consolidated and equivalent notices.

(a) *Contents of the opt-out notice.* (1) *In general.* An opt-out notice must be in writing, be clear and conspicuous, as well as concise, and must accurately disclose the following:

(i) (A) The name of the affiliate that has or previously had a pre-existing business relationship with a consumer, which is providing the notice; or

(B) If jointly provided jointly by multiple affiliates and each affiliate shares a common name, then the notice may indicate that it is being provided by multiple companies with the same name or multiple companies in the same group or family of companies. If the affiliates providing the notice do not share a common name, then the notice must either separately identify each affiliate by name or identify each of the common names used by those affiliates;

(ii) The list of affiliates or types of affiliates whose use of eligibility information is covered by the notice, which may include companies that become affiliates after the notice is provided to the consumer;

(iii) A general description of the types of eligibility information that may be used to make solicitations to the consumer;

(iv) A statement that the consumer may elect to limit the use of eligibility information to make solicitations to the consumer;

(v) A statement that the consumer's election will apply for the specified period of time and, if applicable, that the consumer will be allowed to renew the election once that period expires;

(vi) If the notice is provided to consumers who have previously elected to opt out, that such consumer does not

need to act again until the consumer receives a renewal notice; and

(vii) A reasonable and simple method for the consumer to opt out.

(2) *Specifying length of time period.* If consumer is granted an opt-out period longer than a five-year duration, the opt-out notice must specify the length of the opt-out period.

(3) *No revised notice for extension of opt-out period.* The duration of an opt-out period may be increased for a period longer than the period specified in the opt-out notice without having to provide a revised notice of the increase to the consumer.

(b) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service, a single opt-out notice may be provided to joint consumers.

(2) Any of the joint consumers may exercise the right to opt out on behalf of each joint consumer.

(3) The opt-out election notice must explain how an opt-out election by a joint consumer will be treated. That is, the notice should specify whether an opt-out election by a joint consumer will be treated as applying to all of the associated joint consumers, or as applying to each joint consumer separately.

(4) If the opt-out election notice provides that each joint consumer is permitted to opt out separately, one of the joint consumers must be permitted to opt out on behalf of all of the joint consumers and the joint consumer must be permitted to exercise his or her separate rights to opt out in a single response.

(5) A covered affiliate cannot require all joint consumers to opt out before implementing any opt-out election.

(c) *Alternative contents.* If the consumer is afforded a broader right to opt out of receiving marketing than is required by this subpart, the requirements of this section may be satisfied by providing the consumer with a clear, conspicuous, and concise notice that accurately discloses the consumer's opt-out rights.

(d) *Coordinated and consolidated consumer notices.* A notice required by this subpart may be coordinated and consolidated with any other notice or disclosure required to be issued under any other provision of law by the covered affiliate providing the notice, including but not limited to notices in the FCRA or the GLB Act privacy notices.

(e) *Equivalent notices.* A notice or disclosure that is equivalent to the notice required by this part in terms of content, and that is provided to a consumer together with a notice required by any other provision of law, satisfies the requirements of this section.

(f) *Model notices.* Model notices are provided in Appendix A of this part. These notices were meant to facilitate compliance with this subpart; provided, however, that nothing herein shall be interpreted to require persons subject to this part to use the model notices.

§ 162.6 Reasonable opportunity to opt out.

(a) *In general.* A covered affiliate must not use eligibility information about a consumer that the covered affiliate receives from an affiliate to make a solicitation to such consumer about the covered affiliate's financial products or services, unless the consumer is provided a reasonable opportunity to opt out, as required by this subpart.

(b) *Examples.* A reasonable opportunity to opt out under this subpart is:

(1) If the opt-out notice is mailed to the consumer, the consumer has 30 days from the date the notice is mailed to opt out.

(2) If the opt-out notice is sent *via* electronic means to the consumer, the consumer has 30 days from the date the consumer acknowledges receipt to elect to opt out by any reasonable method.

(3) If the opt-out notice is sent *via* e-mail (where the consumer has agreed to receive disclosures by e-mail), the consumer is given 30 days after the e-mail is sent to elect to opt out by any reasonable method.

(4) If the opt-out notice provided to the consumer at the time of an electronic transaction, the consumer is required to decide, as a necessary part of proceeding with the transaction, whether to opt out before completing the transaction.

(5) If the opt-out notice is provided during an in-person transaction, the consumer is required to decide, as a necessary part of completing the transaction, whether to opt out through a simple process.

(6) If the opt-out notice is provided in conjunction with other privacy notices required by law, the consumer is allowed to exercise the opt-out election within a reasonable period of time and in the same manner as the opt out under that privacy notice.

§ 162.7 Reasonable and simple methods of opting out.

(a) *In general.* A covered affiliate shall be prohibited from using eligibility information about a consumer received from an affiliate to make a solicitation to the consumer about the covered affiliate's financial products or services, unless the consumer is provided a reasonable and simple method to opt out, as required by this subpart.

(b) *Examples.* Reasonable and simple methods of opting out include:

(1) Designating a check-off box in a prominent position on an opt-out election form;

(2) Including a reply form and a self-addressed envelope (in a mailing);

(3) Providing an electronic means, if the consumer agrees, that can be electronically mailed or processed through an Internet Web site;

(4) Providing a toll-free telephone number; or

(5) Exercising an opt-out election through whatever means are acceptable under a consolidated privacy notice required under other laws.

(c) *Specific opt-out method.* Each consumer may be required to opt out through a specific method, as long as that method is acceptable under this subpart.

§ 162.8 Acceptable delivery methods of opt-out notices.

(a) *In general.* The opt-out notice must be provided so that each consumer can reasonably be expected to receive actual notice.

(b) *Electronic notices.* For opt-out notices provided electronically, the notice may be provided in compliance with either the electronic disclosure provisions in § 1.4 of this title or the provisions in section 101 of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*

§ 162.9 Renewal of opt out.

(a) *Renewal notice and opt-out requirement.* (1) *In general.* Since the FCRA provides that opt-out elections can expire in a period of no less than five years, an affiliate that has or previously had a pre-existing business relationship with a consumer must provide a renewal notice to the consumer after such time in order to allow its affiliates to make solicitations. After the opt-out election period expires, its affiliates may make solicitations unless:

(i) The consumer has been given a renewal notice that complies with the requirements of this section and §§ 162.6 through 162.8 of this subpart, and a reasonable opportunity and a reasonable and simple method to renew the opt-out election, and the consumer does not renew the opt out; or

(ii) An exception in Sec. 162.3(c) of this subpart applies.

(2) *Renewal period.* Each opt-out renewal must be effective for a period of at least five years as provided in § 162.4(b) of this subpart.

(3) *Affiliates who may provide the renewal notice.* The notice required by this paragraph must be provided:

(i) By the affiliate that provided the previous opt-out notice, or its successor; or

(ii) As part of a joint renewal notice from two or more members of an affiliated group of companies, or their successors, that jointly provided the previous opt-out notice.

(b) *Contents of renewal or extension notice.* The contents of the renewal notice must include all of the same contents of the initial notices, but also must include:

(1) A statement that the consumer previously elected to limit the use of certain information to make solicitations to the consumer;

(2) A statement that the consumer may elect to renew the consumer's previous election; and

(3) If applicable, a statement that the consumer's election to renew will apply for a specified period of time stated in the notice and that the consumer will be allowed to renew the election once that period expires.

(c) *Timing of renewal notice.* Renewal notices must be provided in a reasonable period of time before the expiration of the opt-out election period or any time after the expiration of the opt-out period, but before solicitations that would have been prohibited by the expired opt-out election are made to the consumer.

(d) *No effect on opt-out period.* An opt-out period may not be shortened by sending a renewal notice to the consumer before the expiration of the opt-out period, even if the consumer does not renew the opt-out election.

§§ 162.10–162.20 [Reserved.]

Subpart B—Disposal Rules

§ 162.21 Proper disposal of consumer information.

(a) *In general.* Any covered affiliate must adopt must adopt reasonable, written policies and procedures that address administrative, technical, and physical safeguards for the protection of consumer information. These written policies and procedures must be reasonably designed to:

(1) Insure the security and confidentiality of consumer information;

(2) Protect against any anticipated threats or hazards to the security or integrity of consumer information; and

(3) Protect against unauthorized access to or use of consumer information that could result in substantial harm or inconvenience to any consumer.

(b) *Standard.* Any covered affiliate under this part who maintains or otherwise possesses consumer information for a business purpose must properly dispose of such information by taking reasonable measures to protect against unauthorized access to or use of the information in connection with its disposal.

(c) *Examples.* The following examples are ''reasonable'' disposal measures for the purposes of this subpart—

(1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, or shredding of papers containing consumer information so that the information cannot practicably be read or reconstructed;

(2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media containing consumer information so that the information cannot practically be read or reconstructed; and

(3) After due diligence, entering into and monitoring compliance with a written contract with another party engaged in the business of record destruction to dispose of consumer information in a manner that is consistent with this rule.

(d) *Relation to other laws.* Nothing in this section shall be construed:

(1) To require a person to maintain or destroy any record pertaining to a consumer that is imposed under Sec. 1.31 or any other provision of law; or

(2) To alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Appendix A to Part 162—Sample Clauses

A. Although use of the model forms is not required, use of the model forms in this Appendix (as applicable) complies with the requirement in section 624 of the FCRA for clear, conspicuous, and concise notices.

B. Certain changes may be made to the language or format of the model forms without losing the protection from liability afforded by use of the model forms. These changes may not be so extensive as to affect the substance, clarity, or meaningful sequence of the language in the model forms. Persons making such extensive revisions will lose the safe harbor that this Appendix provides. Acceptable changes include, for example:

1. Rearranging the order of the references to ''your income'', ''your account history'', and ''your credit score''.

2. Substituting other types of information for ''income'', ''account history'', or ''credit score'' for accuracy, such as ''payment history'', ''credit history'', or ''claims history''.

3. Substituting a clearer and more accurate description of the affiliates providing or covered by the notice for phrases such as ''the [ABC] group of companies,'' including without limitation a statement that the entity providing the notice recently purchased the consumer's account.

4. Substituting other types of affiliates covered by the notice for ''commodity advisor'', ''futures clearing merchant'', or ''swap dealer'' affiliates.

5. Omitting items that are not accurate or applicable. For example, if a person does not limit the duration of the opt-out period, the notice may omit information about the renewal notice.

6. Adding a statement informing consumers how much time they have to opt out before shared eligibility information may be used to make solicitations to them.

7. Adding a statement that the consumer may exercise the right to opt out at any time.

8. Adding the following statement, if accurate: ''If you previously opted out, you do not need to do so again.''

9. Providing a place on the form for the consumer to fill in identifying information, such as his or her name and address.

- A–1 Model Form for Initial Opt-out notice (Single-Affiliate Notice)
- A–2 Model Form for Initial Opt-out notice (Joint Notice)
- A–3 Model Form for Renewal Notice (Single-Affiliate Notice)
- A–4 Model Form for Renewal Notice (Joint Notice)
- A–5 Model Form for Voluntary ''No Marketing'' Notice

A–1 Model Form for Initial Opt-Out Notice (Single-Affiliate Notice)

[Your Choice To Limit Marketing]/ [Marketing Opt Out]

—[Name of Affiliate] is providing this notice.

—[Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]

—You may limit our affiliates in the [ABC] group of companies, such as our [commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that we collect and share with them. This information includes your [income], your [account history with us], and your [credit score].

—Your choice to limit marketing offers from our affiliates will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from our affiliates for [another x years]/[at least another 5 years].

—[Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from our affiliates, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

—By telephone: 1–877–###–####
—On the Web: www.-.com
—By mail: check the box and complete the form below, and send the form to:
—[Company name]
—[Company address]
____Do not allow your affiliates to use my personal information to market to me.

A–2 Model Form for Initial Opt-Out Notice (Joint Notice)

[Your Choice to Limit Marketing]/[Marketing Opt Out]

—The [ABC group of companies] is providing this notice.
—[Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
—You may limit the [ABC companies], such as the [ABC commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].
—Your choice to limit marketing offers from the [ABC] companies will apply [until you tell us to change your choice]/[for x years from when you tell us your choice]/[for at least 5 years from when you tell us your choice]. [Include if the opt-out period expires.] Once that period expires, you will receive a renewal notice that will allow you to continue to limit marketing offers from the [ABC] companies for [another x years]/[at least another 5 years].
– [Include, if applicable, in a subsequent notice, including an annual notice, for consumers who may have previously opted out.] If you have already made a choice to limit marketing offers from the [ABC] companies, you do not need to act again until you receive the renewal notice.

To limit marketing offers, contact us [include all that apply]:

By telephone: 1–877-###–####
On the Web: www.-.com
By mail: check the box and complete the form below, and send the form to:
[Company name]
[Company address]
____ Do not allow any company [in the ABC group of companies] to use my personal information to market to me.

A–3 Model Form for Renewal Notice (Single-Affiliate Notice)

[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt Out]

– [Name of Affiliate] is providing this notice.
– [Optional: Federal law gives you the right to limit some but not all marketing from our affiliates. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from our affiliates.]
– You previously chose to limit our affiliates in the [ABC] group of companies, such as our [commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that we share with them. This information includes your [income], your [account history with us], and your [credit score].
– Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1–877-###–####
On the Web: www.-.com
By mail: check the box and complete the form below, and send the form to:
[Company name]
[Company address]
____Renew my choice to limit marketing for [x] more years.

A–4 Model Form for Renewal Notice (Joint Notice)

[Renewing Your Choice To Limit Marketing]/[Renewing Your Marketing Opt Out]

– The [ABC group of companies] is providing this notice.
– [Optional: Federal law gives you the right to limit some but not all marketing from the [ABC] companies. Federal law also requires us to give you this notice to tell you about your choice to limit marketing from the [ABC] companies.]
– You previously chose to limit the [ABC companies], such as the [ABC commodity advisor, futures clearing merchant, and swap dealer] affiliates, from marketing their financial products or services to you based on your personal information that they receive from other [ABC] companies. This information includes your [income], your [account history], and your [credit score].
– Your choice has expired or is about to expire.

To renew your choice to limit marketing for [x] more years, contact us [include all that apply]:

By telephone: 1–877-###–####
On the Web: www.-.com
By mail: check the box and complete the form below, and send the form to:
[Company name]
[Company address]
____ Renew my choice to limit marketing for [x] more years.

A–5 Model Form for Voluntary "No Marketing" Notice

[Your Choice To Stop Marketing]

– [Name of Affiliate] is providing this notice.
You may choose to stop all marketing from us and our affiliates.

To stop all marketing offers, contact us [include all that apply]:

By telephone: 1–877-###–####
On the Web: www.-.com
By mail: check the box and complete the form below, and send the form to:
[Company name]
[Company address]
____ Do not market to me.

Issued in Washington, DC, on July 7, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

Appendices to Business Affiliate Marketing and Disposal of Consumer Information Rules—Commission Voting Summary and Statements of Commissioners

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Dunn, Sommers, O'Malia and Chilton voted in the affirmative; no Commissioner voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rulemaking to extend to customers of CFTC-regulated entities protections preventing certain business affiliated marketing and establishing other consumer information protections under the Fair Credit Reporting Act (FCRA). The rulemaking protects consumers by providing privacy protections to nonpublic consumer information held by entities that are subject to the jurisdiction of the Commission. The final rulemaking provides customers of CFTC-regulated entities with the same privacy protections now enjoyed by the customers of entities regulated by other Federal agencies.

The rulemaking has two important features. First, it allows customers to prohibit Commission-regulated entities from using certain consumer information obtained from an affiliate to make solicitations to that customer for marketing purposes. This will be done by means of a customer opt out. Second, it requires Commission-regulated entities to develop and implement a written program and procedures for the proper disposal of consumer information. The rulemaking will help prevent the unauthorized use and disclosure of nonpublic, consumer information.

[FR Doc. 2011–17711 Filed 7–21–11; 8:45 am]

BILLING CODE 6351–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–64913]

Technical Amendment to Commission Procedures for Filing Applications for Orders for Exemptive Relief Under Section 36 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendment.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is making technical amendments to the rule by which applications for exemptive relief under section 36 of the Securities and Exchange Act of 1934 (''Exchange Act'') may be submitted electronically. The amendments are intended only to clarify and update references to an SEC Web site address and to eliminate certain formatting requirements.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Linda Stamp Sundberg, Senior Special Counsel, at (202) 551–5550, Office of the Chief Counsel, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is amending § 240.0–12(b) to update references to an SEC Web site address to be used in submitting applications for exemptive relief under section 36 of the Exchange Act and to eliminate certain formatting requirements.

I. Certain Findings

Under the Administrative Procedure Act (''APA''), notice of proposed rulemaking is not required when an agency, for good cause, finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [1] The Commission is making technical changes to update the instructions and method for submitting a petition. The Commission finds that because the amendment is technical in nature and is being made solely to reflect the changes in way a person would submit and the Commission would receive a petition, publishing the amendment for comment is unnecessary.[2]

The APA also requires publication of a rule at least 30 days before its effective date unless the agency finds otherwise for good cause.[3] For the same reasons described above with respect to notice and opportunity for comment, the Commission finds that there is good cause for these technical amendments to take effect on July 22, 2011.

II. Consideration of Competitive Effects of Amendment

Section 3(f) of the Exchange Act,[4] provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.[5]

Because these procedural amendments are technical in nature, and do not impose any additional requirements beyond those already required, we do not anticipate that the amendments would have a significant effect on efficiency, competition, or capital formation, and we do not anticipate that any competitive advantages or disadvantages would be created.

III. Statutory Authority and Text of Amendment

We are adopting these technical amendments pursuant to the authority set forth in the Exchange Act and particularly Sections 23(a) and 36(a) (15 U.S.C. 78w(a), and 78mm(a), respectively).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

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

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

■ 1. The authority citation for part 240 continues to read, in part, 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, 78l, 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.

* * * * *

■ 2. Section 240.0–12 is amended by revising paragraph (b) to read as follows:

§ 240.0–12 Commission procedures for filing applications for orders for exemptive relief under Section 36 of the Exchange Act.

* * * * *

(b) An applicant may submit a request electronically. The electronic mailbox to use for these applications is described on the Commission's Web site at *http://www.sec.gov* in the ''Exchange Act Exemptive Applications'' section. In the event the electronic mailbox is revised in the future, applicants can find the appropriate mailbox by accessing the ''Electronic Mailboxes at the Commission'' section.

* * * * *

Dated: July 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18513 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[1] 5 U.S.C. 553(b).

[2] For similar reasons, the amendments do not require analysis under the Regulatory Flexibility Act (''RFA'') or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. *See* 5 U.S.C. 601(2) (for purposes of RFA analysis, the term ''rule'' means any rule for which the agency publishes a general notice of proposed rulemaking); and 5 U.S.C. 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term ''rule'' does not include any rule of agency organization, procedure or practice that does not substantially affect the rights or obligations of non-agency parties).

[3] *See* 5 U.S.C. 553(d)(3).

[4] 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78w(a)(2).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9530]

RIN 1545–BH56

Guidance Under Section 956 for Determining the Basis of Property Acquired in Certain Nonrecognition Transactions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document describes a correction to final and temporary regulations (TD 9530) that were published in the **Federal Register** on Friday, June 24, 2011, regarding the determination of basis in certain United States property acquired by a controlled foreign corporation in certain nonrecognition transactions that are intended to repatriate earnings and profits of the controlled foreign corporation without U.S. income taxation.

DATES: This correction is effective on July 22, 2011, and is applicable beginning June 24, 2011.

FOR FURTHER INFORMATION CONTACT: Kristine A. Crabtree, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction are under section 956 of the Internal Revenue Code.

Need for Correction

As published at (76 FR 36993), final and temporary regulations (TD 9530) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final and temporary regulations (TD 9530) which were the subject of FR Doc. 2011–15741 is corrected as follows:

On page 36995, column 3, in the signature block, line 5, the name ''Emily S. Mahon'' is corrected to read ''Emily S. McMahon''.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, Procedure and Administration.

[FR Doc. 2011–18469 Filed 7–21–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9538]

RIN 1545–BK14

Modifications of Certain Derivative Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that address when a transfer or assignment of certain derivative contracts does not result in an exchange to the nonassigning counterparty for purposes of § 1.1001–1(a). The text of these temporary regulations also serves as the text of the proposed regulations (REG–109006–11) set forth in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on July 22, 2011.

Applicability Date: For the date of applicability, see § 1.1001–4T(d).

FOR FURTHER INFORMATION CONTACT: Andrea M. Hoffenson, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 1001 of the Internal Revenue Code (Code) provides rules for the computation and recognition of gain or loss from a sale or other disposition of property. For purposes of section 1001, § 1.1001–1(a) of the Income Tax Regulations generally provides that gain or loss is realized upon an exchange of property for other property differing materially either in kind or in extent. As a general matter, the assignment of a notional principal contract is treated as a taxable disposition to a nonassigning counterparty if the resulting contract differs materially either in kind or in extent. See *Cottage Savings Association* v. *Commissioner,* 499 U.S. 554, 566 (1991) [1991–2 CB 34, 38] (''Under [the Court's] interpretation of [section] 1001(a), an exchange of property gives rise to a realization event so long as the exchanged properties are 'materially different'—that is, so long as they embody legally distinct entitlements.''). Section 1.1001–4(a) provides, however, that the substitution of a new party on a notional principal contract is not treated as a deemed exchange of the contract by the nonassigning party for purposes of § 1.1001–1(a) if two conditions are satisfied: the assignment is between dealers in notional principal contracts and the terms of the contract permit the substitution.

Many notional principal contracts permit assignment of the contract only with the consent of the nonassigning counterparty. There has been some uncertainty as to whether a contract that requires the consent of the nonassigning counterparty as a condition to assignment will satisfy the second requirement of § 1.1001–4(a) as described in the previous paragraph. In addition, commenters have suggested that the scope of § 1.1001–4 is too narrow because it only applies to notional principal contracts. The need to amend § 1.1001–4 has been increased by the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203 (124 Stat 1376 (2010)) (Dodd-Frank), which in some cases will necessitate the movement of entire books of derivative contracts. In particular, there is a concern that the assignment of derivative contracts may create a taxable event for the nonassigning counterparties to the assigned contracts.

The IRS and the Treasury Department agree that § 1.1001–4 should be amended and expanded to include derivative contracts other than notional principal contracts. These temporary regulations replace the current, final regulations of § 1.1001–4.

Explanation of Provisions

These temporary regulations provide that there is no exchange to the nonassigning counterparty for purposes of § 1.1001–1(a) solely because a dealer in securities or a clearinghouse transfers or assigns a derivative contract to another dealer in securities or clearinghouse, provided that the transfer or assignment is permitted by the terms of the contract. The derivative contracts to which these regulations apply are those described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F). In addition, these temporary regulations provide that transfers or assignments are permitted by the terms of the contract when consent of the nonassigning counterparty is required as well as those transfers or assignments that do not require consent. If consideration passes between the assignor and assignee in connection with the transfer or assignment, the consideration will not affect the treatment of the nonassigning counterparty for purposes of § 1.1001–4. If any consideration is paid to or received by the nonassigning counterparty, however, the payment or receipt of the consideration is analyzed under the general principles of section 1001 to determine its effect on the nonassigning counterparty. In addition, any changes to the terms of the contract are analyzed under the general principles of section 1001 to determine whether there has been a sale or disposition of the contract by the parties.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Andrea M. Hoffenson, Office of Associate Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.1001–4 is revised to read as follows:

§ 1.1001–4 Modifications of certain derivative contracts.

(a) through (d) [Reserved]. For further guidance, see § 1.1001–4T(a) through (d).

■ **Par. 3.** Section 1.1001–4T is added to read as follows:

§ 1.1001–4T Modifications of certain derivative contracts (temporary).

(a) *Certain assignments.* For purposes of § 1.1001–1(a), the transfer or assignment of a derivative contract is not treated by the nonassigning counterparty as a deemed exchange of the original contract for a modified contract that differs materially either in kind or in extent if—

(1) Both the party transferring or assigning its rights and obligations under the derivative contract and the party to which the rights and obligations are transferred or assigned are either a dealer in securities or a clearinghouse;

(2) The terms of the derivative contract permit the transfer or assignment of the contract, whether or not the consent of the nonassigning counterparty is required for the transfer or assignment to be effective; and

(3) The terms of the derivative contract are not otherwise modified in a manner that results in a taxable exchange under section 1001.

(b) *Definitions.* (1) *Dealer in securities.* For purposes of this section, a *dealer in securities* is a taxpayer who meets the definition of a dealer in securities in section 475(c)(1).

(2) *Clearinghouse.* For purposes of this section, a *clearinghouse* is a derivatives clearing organization (as such term is defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) or a clearing agency (as such term is defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))) that is registered, or exempt from registration, under each respective Act.

(3) *Derivative contract.* For purposes of this section, a *derivative contract* is a contract described in section 475(c)(2)(D), 475(c)(2)(E), or 475(c)(2)(F) without regard to the last sentence of section 475(c)(2) referencing section 1256.

(c) *Consideration for the assignment.* Any consideration for the transfer or assignment that passes between the party transferring or assigning its rights and obligations under the contract and the party to which the rights and obligations are transferred or assigned will not affect the treatment of the nonassigning counterparty for purposes of this section.

(d) *Effective/applicability date.* This section applies to transfers or assignments of derivative contracts on or after July 22, 2011.

(e) *Expiration date.* The applicability of this section expires on or before July 21, 2014.

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

Approved: July 15, 2011.

Emily S. McMahon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2011–18529 Filed 7–21–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[USCG–2011–0648]

RIN 1625–AA08

Special Local Regulations; Port Huron to Mackinac Island Sail Race

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary special local regulation for the annual Port Huron to Mackinac Island Sail Race. This action is necessary to safely control vessel movements in the vicinity of the race's starting point and to provide for the safety of the general boating public and commercial shipping. No person or vessel may enter the regulated area without the permission of the Ninth District Commander or the Coast Guard Patrol Commander (PATCOM).

DATES: This temporary final rule is effective from 9 a.m. through 4 p.m. on July 23, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0648 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0648 in the Docket ID box, and then clicking ''Search.'' This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey, Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this temporary rule, call or e-mail Mr. Frank Jennings, Jr., Auxiliary and Boating Safety Branch, Ninth Coast Guard District, via e-mail at: *Frank.T.Jennings@uscg.mil* or by phone at (216) 902–6094. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency, for good cause, finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so is unnecessary and contrary to the public interest. Publishing an NPRM for this rule is unnecessary and contrary to the public interest because the event is well-known, non-controversial, and the impact of the regulation on navigation and the public is very low. This event is well-known in the community. This year will be the 87th annual running of this race, and regulations have been published relating to this event since 1995. From 1995 to 2008, this event was listed in a recurring marine events list in the Code of Federal Regulations. This event is non-controversial. In the various regulations and notices published for this event in the last sixteen years, no negative comments have ever been received and few, if any Notices of Violation have been issued. This regulation will have very little impact on the boating public. The regulation is for less than one day, for a regulated area which remains open to navigation, though subject to the control of the Patrol Commander.

The Coast Guard is currently engaged in a revision of the permanent regulation for this recurring annual event. While this event has taken place annually for some time, the Special Local Regulation for the event has undergone significant changes in the last several years. While these changes are in process, Temporary Final Rules are being used to protect event participants and the public from the hazards associated with the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed in the preceding paragraphs, waiting 30 days for this rule to become effective is unnecessary and contrary to the public interest.

Background and Purpose

The Port Huron to Mackinac boat race (officially titled the ''Bell's Beer Bayview Mackinac Race'') will set sail on Saturday, July 23, 2011. Over 200 sailboats are expected to take part in this regatta, which starts in Port Huron. The Ninth District Commander has determined that the high concentration of participants and spectators at the race's starting point poses extra and unusual hazards to the boating public. The likely combination of congested waterways, vessels engaged in a regatta, and fast currents could result in serious injuries or fatalities.

Discussion of Rule

With the aforementioned hazards in mind, the Ninth District Commander will enforce special local regulations in the vicinity of the race's starting point from 9 a.m. until 4 p.m. on July 23, 2011. The special local regulations apply to the waters of the Black River, St. Clair River and lower Lake Huron bounded by a line starting at: latitude 042°58′47″ N, longitude 082°26′00″ W; then easterly to latitude 042°58′24″ N, longitude 082°24′47″ W; thence northward along the International Boundary to latitude 043°02′48″ N, longitude 082°23′47″ W; then westerly to the shoreline at approximate location latitude 043°02′48″ N, longitude 082°26′48″ W; thence southward along the U.S. shoreline to latitude 042°58′54″ N, longitude 082°26′01″ W; then back to the beginning. All coordinates reference the North American Datum of 1983 (NAD 83).

In order to ensure the safety of spectators and participating vessels, this special local regulation will be in effect for the first day of the event. The Coast Guard will patrol the race area under the direction of a designated Coast Guard Patrol Commander (PATCOM). Any vessel desiring to transit the regulated area, including commercial vessels, may do so only with prior approval of the PATCOM and only when so directed by the PATCOM. The PATCOM may be contacted on VHF–FM Channel 16 (156.8 MHZ) by the call sign ''Coast Guard Patrol Commander.''

Vessels allowed to enter the regulated area will be operated at a no wake speed to reduce the wake to a minimum and in a manner that will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

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 that those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that during the short time this zone will be in effect, it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel or legal policy issue. These conclusions are based on this special local regulation's short and temporary nature along with its application to only those waters in the vicinity of the race's starting point. Plus, vessels may still pass through the regulated area with permission from the PATCOM. Finally, the Coast Guard expects the public to be well aware of this event and thus, able to plan accordingly.

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 or anchor in a portion of the Black River, St. Clair River, and lower Lake Huron from 9 a.m. until 4 p.m. July 23, 2011.

These special local regulations will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced for only 7 hours on a weekend when the majority of vessel traffic transiting the area is recreational; vessel traffic will be allowed to pass through the regulated area with the permission of the Coast Guard Patrol Commander; and before the effective period, the Coast Guard will issue maritime advisories widely to users of the river.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could 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 affect 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 a special local regulation issued in conjunction with a regatta or marine parade, and thus, paragraph 34(h) applies. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 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 § 100.35T09–0648 to read as follows:

§ 100.35T09–0648 Special Local Regulations; Port Huron to Mackinac Island Sail Race.

(a) *Location.* The special local regulations apply to the waters of the Black River, St. Clair River, and lower Lake Huron starting at: Latitude 042°58′47″ N, longitude 082°26′00″ W; then easterly to latitude 042°58′24″ N, longitude 082°24′47″ W; thence northward along the International Boundary to latitude 043°02′48″ N, longitude 082°23′47″ W; then westerly to the shoreline at approximate location latitude 043°02′48″ N, longitude 082°26′48″ W; thence southward along the U.S. shoreline to latitude 042°58′54″ N, longitude 082°26′01″ W; then back to the beginning [DATUM: NAD 83].

(b) *Enforcement period.* This rule will be enforced from 9 a.m. to 4 p.m. on July 23, 2011.

(c) *Regulations.* (1) In accordance with the general regulations in § 100.35 of this part, the Coast Guard will patrol the regulated area under the direction of a designated Coast Guard Patrol Commander (PATCOM). The PATCOM may be contacted on VHF–FM Channel 16 (156.8 MHz) by the call sign ''Coast Guard Patrol Commander.'' Vessels desiring to enter or transit the regulated area may do so only with prior approval of the PATCOM and only when so directed by that officer.

(2) Vessels allowed to enter the regulated area will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. The rules in this subparagraph shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard PATCOM shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the PATCOM. Failure to do so may result in expulsion from

the regulated area, citation for failure to comply, or both.

(4) The PATCOM may establish vessel size and speed limitations and operating conditions. The PATCOM may restrict vessel operation within the regulated area to vessels having particular operating characteristics. The PATCOM may terminate the marine event or the operation of vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 12, 2011.

J.R. Bingaman,

Captain, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 2011–18483 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0573]

RIN 1625–AA00

Safety Zone; Kathleen Whelan Wedding Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake St. Clair, Grosse Pointe Farms, MI. This zone is intended to restrict vessels from a portion of Lake St. Clair during the Kathleen Whelan Wedding Fireworks.

DATES: This rule is effective from 9:30 p.m. through 10 p.m. on July 23, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2011–0573 and are available online by going to *http://www.regulations.gov,* inserting USCG–2011–0573 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Adrian Palomeque, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9523, e-mail *Adrian.F.Palomeque@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because waiting for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

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**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because it would inhibit the Coast Guard from ensuring the safety of vessels and the public during the fireworks display.

Background and Purpose

On July 23, 2011, a private party is holding a land based wedding that will include fireworks launched from a point on Lake St. Clair. The fireworks display will occur between 9:30 p.m. and 10 p.m., July 23, 2011. The Captain of the Port Detroit has determined that waterborne fireworks pose serious risks to the boating public. Such hazards include obstructions to the waterway that may cause marine casualties, explosive danger of fireworks, debris falling into the water that may cause death, serious bodily harm or property damage.

Discussion of Rule

Because of the aforementioned hazards, the Captain of the Port Detroit has determined that it a temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Kathleen Whelan Wedding Fireworks Display.

The safety zone will encompass all waters on Lake St. Clair within a 600 foot radius of the fireworks barge launch site located off the shore of Grosse Pointe Farms, MI at position 42°23′5″ N, 082°53′37″ W from 9:30 p.m. until 10 p.m. on July 23, 2011. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone around the launch platform will be relatively small and exist for only a minimal time. Thus, restrictions on vessel movement within any particular area of Lake St. Clair are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

Small Entities

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

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in this portion of Lake St. Clair between 9:30 p.m. through 10 p.m. on July 23, 2011.

This safety zone will not have a significant economic impact on a substantial number of small entities because vessels can easily transit around the zone. The Coast Guard will give notice to the public via Local Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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)(g) of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add 165.T09–0573 to read as follows:

§ 165.T09–0573 Safety zone; Kathleen Whelan Wedding Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location.* The safety zone will encompass all U. S. navigable waters on Lake St. Clair within a 600 foot radius of position 42°23′5″ N, 082°53′37″ W, location off shore of Grosse Pointe Farms, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9:30 p.m. through 10 p.m. on July 23, 2011.

(c) *Regulations.*

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

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

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

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: July 12, 2011.

J.E. Ogden,

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

[FR Doc. 2011–18595 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: On July 14, 2011, the Postal Service published an amendment to the rules concerning the establishment, classification, and discontinuance of post offices. That rule contained certain incorrect internal cross-references, which are corrected by this further rulemaking.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268–6799.

SUPPLEMENTARY INFORMATION: The Postal Service published a final rule in the **Federal Register** on July 14, 2011 (76 FR 41413), amending the retail facility discontinuance regulations in 39 CFR part 241. In sections I.H (*Notice to Customers Served by Suspended Facility*) (76 FR 41416), I.K (*Emergency Suspensions*) (76 FR 41417), and I.O (*Procedural Recommendations*) (76 FR 41418) of the **SUPPLEMENTARY INFORMATION** in the preamble, the Postal Service erroneously cited 39 CFR 241.3(a)(4)(iii), which should have referred, in sections I.H and I.K, to subparagraph 241.3(a)(5)(iv) and, in section I.O, to subparagraph 241.3(a)(5)(iii).

In addition, subparagraph 241.3(a)(5)(iv) of the regulations contained in the final rule (76 FR 41421–22) contained erroneous cross-references to clause 241.3(a)(4)(i)(B) and subparagraph 241.3(a)(4)(iii), which should have referred to the respective provisions of paragraph 241.3(a)(5) instead. This final rule corrects the errors in 39 CFR 241.3(a)(5)(iv).

The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

§ 241.3 [Corrected]

■ 2. In 39 CFR 241.3:

■ a. In the first sentence of paragraph (a)(5)(iv), remove ''241.3(a)(4)(i)(B)'' and add ''241.3(a)(5)(i)(B)'' in its place.

■ b. In the third sentence of paragraph (a)(5)(iv), remove ''241.3(a)(4)(iii)'' and add ''241.3(a)(5)(iii)'' in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–18481 Filed 7–21–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0302; FRL–9442–2]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving and conditionally approving the State Implementation Plan (SIP) submission from the State of Utah to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of Utah submitted two certifications, dated December 3, 2007, and December 21, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The December 3, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205).

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0302. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard

copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Utah had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 23, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Utah (76 FR 29688) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Utah's SIP as meeting the requirements of all section 110(a)(2) elements with respect to the 1997 ozone NAAQS, aside from elements 110(a)(2)(D)(i), 110(a)(2)(I), and the visibility protection requirement of element 110(a)(2)(J), on which EPA did not propose action.[2]

In the May 23, 2011 NPR, EPA proposed to conditionally approve element 110(a)(2)(B) for the 1997 ozone NAAQS. EPA had discovered certain deficiencies in Utah's monitoring network plan and Utah formally committed to submitting an adequate annual monitoring plan not later than one year after the date of this final action to correct those deficiencies.[3] In the NPR, EPA also stated that if Utah does not implement the measures specified in its commitment within one year after the date of this final action, EPA's conditional approval will automatically revert to disapproval of the infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS.

EPA proposed to approve element 110(a)(2)(C) for the 1997 ozone NAAQS in the event that the State clarified (or modified) its December 3, 2007 and December 21, 2009 certifications to ensure consistency with two rules related to regulation of greenhouse gas (GHG) emissions: ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule''), 75 FR 31514 (June 3, 2010), and ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans'' (''PSD SIP Narrowing Rule''), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Utah's prevention of significant deterioration (PSD) program to the extent that it applied PSD permitting to GHG emissions increases from GHG-emitting sources below thresholds set in the Tailoring Rule. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Utah's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its December 3, 2007 and December 21, 2009 certifications, Utah relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposed approval of the Utah Infrastructure SIP for infrastructure element (C) if either the State clarified (or modified) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acted to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. On June 22, 2011, EPA received a letter from Utah clarifying that the State relies only on the portion of the PSD program that remains approved after the PSD SIP

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See the NPR (76 FR 29688) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

[3] The specific measures Utah will take are detailed in the commitment letter, which may be found in the docket for this action.

Narrowing Rule issued on December 30, 2010.[4]

EPA's proposed approval of elements 110(a)(2)(C) and (J) for the 1997 ozone NAAQS was also contingent on the final approval of the State's August 7, 2008 submittal. The State's PSD program, as submitted, for the most part incorporates by reference the Federal program at 40 CFR 52.21. The August 7, 2008 submittal updates the date of incorporation by reference of the State's PSD program to July 7, 2007, therefore incorporating EPA's phase 2 implementation rule for the 1997 ozone NAAQS (Phase 2 Rule), which includes requirements for PSD programs to treat nitrogen oxides (NO_x) as a precursor for ozone (72 FR 71612, November 29, 2005). EPA proposed approval of the August 7, 2008 submittal on January 7, 2009 (74 FR 667), and finalized approval on June 29, 2011. EPA therefore approves in full elements 110(a)(2)(C) and (J) with this action.

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[5] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details

[4] Utah's June 22, 2011 clarification letter is available in the docket for this action.

[5] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[6] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[7]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[8] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[9] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[10]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[11] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[12] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[13] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with

[6] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[7] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[8] See, *e.g., Id.,* 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[9] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[12] *Id.,* at page 2.

[13] *Id.,* at attachment A, page 1.

assistance from EPA Regions.'' [14] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[15] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[17]

II. Response to Comments

EPA received two comment letters on June 22, 2011, one from WildEarth Guardians (WEG) and the other from Western Resource Advocates (WRA), both environmental organizations. The WRA comment letter was written on behalf of both WRA and the organization Utah Physicians for a Healthy Environment (UPHE). The significant comments made by WRA and EPA's responses to those comments are given below in Section (A). The significant comments made by WEG and EPA's responses to those comments are given below in Section (B).

Section A: WRA Comments and EPA Responses

Comment No. 1: The commenter stated that the State of Utah must strike from its regulations ''any provisions allowing 'director's discretion' to change unilaterally EPA-approved SIP-based emission limits, permitting variances and exempting excess startup, shutdown and malfunction emissions from compliance and enforcement provisions.'' The commenter further stated that ''definitive EPA action'' on such provisions ''cannot come too soon.''

EPA Response: EPA shares the commenter's concerns that such provisions can have adverse impacts on air planning and enforcement, and as a result can have an adverse impact on

[14] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[15] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[16] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42,342 at 42,344 (July 21,2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

protection of public health. As discussed in greater depth in the Background section, EPA is not addressing startup, shutdown, and malfunction (SSM), variance, or director's discretion provisions in the context of this action on 110(a)(2) requirements for the 1997 ozone NAAQS. As stated in the NPR, EPA intends to address these issues separately at a later date.

However, with respect to the commenter's concerns about SSM provisions, EPA notes that the Agency has already issued a finding of substantial inadequacy and called for a SIP revision for Utah's ''unavoidable breakdown'' rule (76 FR 21639, Apr. 18, 2011). This action preceded, was independent of, and was not required for our action on section 110(a)(2)(A) for the 1997 ozone NAAQS. EPA considers this an important step towards addressing the issue noted by the commenter.

Comment No. 2: The commenter supported EPA efforts to address issues concerning the monitoring network for ozone in Utah. In particular, the commenter supported EPA's efforts to encourage the State to address the monitoring network in the Saint George area, specifically by completing its ozone saturation study in 2011, using that study to identify maximum concentration locations, and adjusting the monitoring network as required by the study. However, the commenter also urged EPA to require immediate action from the State to ensure adequate monitoring in the Saint George area, and, if necessary, immediately implement any controls necessary to bring the area into compliance with the ozone NAAQS.

EPA Response: EPA acknowledges the support for our conditional approval, based on Utah's commitment to make improvements with regard to monitoring as the commenter described. EPA notes that the State has committed to doing so within one year, and that with this data the State and EPA can then evaluate what additional actions may be necessary based upon better information concerning the ambient air quality in the area.

With respect to the 1997 ozone NAAQS, the data collected in southern Utah have not suggested a potential for ozone levels to violate that standard. From data collected in Zion National Park (2004–2010), Saint George (1995–1997), Santa Clara (2008–2010), and Mesquite, Nevada (33 miles southwest of Saint George and 13 miles from the Utah border), the highest design value recorded was 79 parts per billion (ppb) in Zion National Park in 2004–2006. While the current Santa Clara monitor has not been shown to be sited to measure maximum concentration monitoring, there is no evidence to suggest a maximum concentration monitoring site elsewhere would record data in excess of the 1997 ozone NAAQS. Utah's commitment to ensuring that a monitor is placed at the maximum concentration site will allow the State and EPA to correctly assess air quality in the Saint George metropolitan statistical area (MSA).

Comment No. 3: The commenter supported EPA's efforts to regulate greenhouse gases.

EPA Response: EPA presumes that the commenter's support related to EPA's efforts to insure that the Utah infrastructure SIP adequately addresses PSD permitting requirements with respect to greenhouse gases as discussed in the NPR in accordance with the PSD SIP Narrowing Rule. As discussed in the background section above, in response to our proposal, Utah clarified that its infrastructure certification should not be read to rely on the portion of the PSD program for which the PSD SIP Narrowing Rule withdrew approval. Therefore, EPA has concluded that the current EPA approved Utah SIP is consistent with section 110(a)(2)(C) for purposes of greenhouse gases.

Comment No. 4: The commenter supported EPA's efforts to require ozone monitoring in Utah's Uinta Basin. However, the commenter urged EPA to use existing ozone monitoring data, which the commenter claimed ''plainly show that air quality in the basin is not in compliance with the ozone standard,'' to designate the Uinta Basin as nonattainment for ozone.[18] The commenter also urged EPA to require Utah to install monitors in Vernal, Utah.

EPA Response: EPA shares the concerns of the commenters with respect to the monitoring network in Utah. However, in this action EPA is evaluating the adequacy of the infrastructure SIP of the State with respect to the 1997 8-hour ozone NAAQS. EPA has specific regulatory requirements at 40 CFR part 58 that provide requirements for the ambient air monitoring network required by section 110(a)(2)(B) of the Act for these NAAQS.

As discussed in the response to comment 3 in section B below, 40 CFR part 58 does not contain requirements for the State to monitor for ozone in the Uinta Basin. EPA therefore has no basis in this action to disapprove the infrastructure SIP due to the absence of an ozone monitor in Vernal. Nonetheless, EPA notes that both Utah Department of Environmental Quality (DEQ) and the Ute Indian Tribe of the Uintah and Ouray Reservation began ozone monitoring in the Uinta Basin in 2011. These monitors should provide data that can be used to evaluate the appropriate designation for the Uinta Basin area, once there is sufficient data. Promulgation of area designations for a NAAQS is outside the scope of this action, the purpose of which is limited to review the Utah SIP for compliance with the infrastructure SIP requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS.

Comment No. 5: The commenter stated that ''Utah's PSD program fails to comply'' with the CAA, and therefore encouraged EPA to disapprove the State's submission with regards to its PSD program and the requirements of section 110(a)(2)(J). Specifically, the commenter asserted that the State's PSD program fails to comply with 40 CFR 70.4(b)(3)(x) with respect to the availability of state judicial review for persons who participated in the public process required under 40 CFR 70.7(h). In essence, the commenter cited rules and statutes governing Utah administrative appeal proceedings, including administrative appeal of PSD permits issued by the State, and argued (for several reasons) that these provide inadequate opportunity for members of the public to participate in administrative appeals. The commenter linked this to the availability of state judicial review of PSD permits by citing a statutory requirement in Utah's Administrative Procedure Act requiring parties seeking judicial review to exhaust all administrative remedies available.

EPA Response: In this action, EPA is evaluating the State's PSD permit program under sections 110(a)(2)(C) and (J), and, more generally, Utah's SIP under section 110(a)(2). The regulatory provision that the commenter cited, 40 CFR 70.4(b)(3), and the corresponding statutory provision in section 503(b)(6) of the CAA, apply only to Title V operating permit programs. In other words, section 503(b)(6) and 40 CFR 70.4(b)(3) do not apply to PSD permits. Furthermore, Utah's Title V program is not part of the Utah SIP. Therefore, any potential deficiency in Utah's Title V program with regards to availability of state judicial review is outside the scope of this action on the infrastructure SIP, and the comment gives us no basis to

[18] The comment does not precisely state which existing ozone monitoring data the commenter refers to. For a discussion of other monitoring data in the Uinta Basin, see the response to comment 1 in section B below.

change our proposed action on section 110(a)(2)(J).[19]

In addition, the comment expressed concerns primarily with a version of Utah Administrative Code (UAC) section R305–6–202 that the comment describes as effective July, 2011. The commenter did not provide a copy of the section showing that it had been adopted. A proposal to adopt the version of R305–6–202 for which the comment provides concerns was published in the Utah State Bulletin on March 15, 2011, with a potential effective date of July 1, 2011.[20] Subsequent issues of the Utah State Bulletin (through June 15, 2011) have not provided a notice of effective date for the proposal, a requirement under section 63G–301–3(12) of the Utah Administrative Procedures Act for a rule to become effective. Thus, the rule has only been proposed and not adopted, and any deficiencies there may be within it do not provide a basis for EPA to change its proposed approval of the current Utah infrastructure SIP for the 1997 ozone NAAQS for elements 110(a)(2)(C) and (J).

Section B: WEG Comments and EPA Responses

Comment No. 1: The commenter expressed concern that Utah's SIP fails ''to attain and maintain the 1997 8-hour ozone NAAQS in the Uinta Basin.'' The commenter pointed to existing monitoring data from two monitors in the Uinta Basin over two years and part of a third to argue that the standard is currently being violated.[21] The commenter asserted that EPA cannot find that Utah's SIP meets section 110(a)(2)(1) and (2) requirements unless the EPA addresses the high ozone levels in the Uinta Basin and uses the resources necessary ''to attain and maintain the NAAQS.''

EPA Response: EPA disagrees with the commenter's view that the monitor data asserted by the commenter has a bearing on the action on the State's infrastructure SIP submission. First, there are currently no nonattainment areas designated in Utah for the 1997 ozone NAAQS. Thus, the State is not currently under an obligation to submit a SIP to meet the requirements of Part D of title I. More importantly, as explained in the NPR, Part D requirements are outside the scope of this action. EPA therefore disagrees with the assertion that, as a result of the cited monitoring data, EPA cannot approve the Utah infrastructure SIP for the 1997 ozone NAAQS.

Furthermore, EPA notes that data cited by the commenter is also not of the type that is needed for making attainment determinations. The monitoring data referenced by the commenter was collected by industrial entities at non-regulatory monitors located in Indian country, outside the jurisdiction of the State of Utah. Furthermore, data collected by the National Park Service in Dinosaur National Monument (albeit also using a non-regulatory monitoring method) indicate a preliminary design value of only 73 ppb for the maximum 3-year average in 2009–2011. This data represents the ambient level at a geographic location within the Uinta Basin that is available outside Indian country in Utah. Thus, there is currently no data from monitoring sites on State jurisdiction lands in or near the Uinta Basin showing violations of the 1997 ozone standard.

Comment No. 2: The commenter claims that the State's commitment letter to update its ozone monitoring network does not represent a commitment that justifies conditional approval, as the letter does not commit to ensuring the actual installation of a monitor in the Saint George area in accordance with 40 CFR part 58, Appendix D, 4.1(b), and other requirements. The commenter also states that EPA did not clearly state the timeline by which a conditional approval reverts to a disapproval, and requests EPA to clarify this statement.

EPA Response: EPA disagrees with this comment. The commitment by the State is appropriately tailored to require the analysis necessary to determine if a monitor should be installed in the Saint George's area. The letter acknowledges that the State has not demonstrated that the existing Santa Clara monitor represents the maximum concentration site in the Saint George core-based statistical area (CBSA) and that the Zion monitoring site operated by the National Park Service has recorded higher ozone values. The letter commits to completing the current saturation study to determine whether the Santa Clara site represents the maximum concentration site, and, if the study shows it necessary, to relocate the monitor in accordance with the requirements of section 4.1 of Appendix D. Of course, if the study is sufficient to demonstrate that the existing Santa Clara site meets the requirements of Appendix D, then no further action is necessary to comply with Appendix D.

Appendix D requires that Utah operate an ozone monitor in the Saint George CBSA, requires that at least one monitor in the Saint George CBSA be designed to measure maximum concentration, and that the siting of the Saint George monitor(s) be approved by the EPA Regional Administrator. EPA's conditional approval requires Utah to comply with these requirements within 1 year of the publication of the final rule. If the EPA Regional Administrator has not approved the monitor siting in the Saint George CBSA within 1 year of publication of the final rule, the conditional approval of the Utah infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS will automatically revert to disapproval.

Comment No. 3: The commenter expressed concern that the ozone monitoring sites in the Uinta Basin do not fully comply with 40 CFR part 58, specifically the requirement that ''monitors are sited to ensure that maximum concentrations are recorded.'' The commenter also stated that, in order to meet the requirements of section 110(a)(2)(B), EPA must ensure the Utah SIP requires the State to monitor ozone during the winter months, particularly in the Uinta Basin. The commenter asserted that monitoring should continue during the winter months when the highest ambient levels occur.

EPA Response: EPA disagrees with the commenter's view that the current SIP is not approvable under section 110(a)(2)(B), based on the monitoring concerns raised by the commenter. The existing Utah ozone monitoring network and plan comply with 40 CFR part 58 requirements with respect to Uintah, Duchesne and Carbon counties. 40 CFR part 58 does not currently require ozone monitoring in the Uinta Basin, because ozone monitoring is only required in Metropolitan Statistical Areas (MSAs). Furthermore, the maximum concentration monitoring requirement of Appendix D applies specifically to monitoring in MSAs, defined in 40 CFR 58.1 as ''a CBSA associated with at least

[19] Although EPA is not assessing the availability of state judicial review for PSD permits issued by Utah, as the CAA makes no requirements regarding such availability, EPA also notes that the comment does not explain, for example, why denial of a petition to intervene in a state administrative PSD permit proceeding would not exhaust the petitioner's administrative remedies and therefore make state judicial review available to the petitioner.

[20] Similarly, a proposed conforming amendment to UAC section R307–103 (containing the current administrative procedures for adjudicative proceedings under the Utah Air Conservation Act) was published May 1, 2011, but no notice of effective date has been published. The status of these proposals is confirmed by the Utah Division of Administrative Rules Web page, Rules Effective Since Last Codification, available at *http://www.rules.utah.gov/publicat/codificationsegue.htm* (last visited June 29, 2011).

[21] The monitoring data provided by WEG to support this argument is available in the docket for this action.

one urbanized area of 50,000 population or greater.'' There are no such MSAs in Uintah, Duchesne, or Carbon counties.

With respect to the season during which monitoring is currently required, the required ozone monitoring seasons are provided in Appendix D, which currently specifies monitoring from May through September. EPA published a proposed revision to the ozone monitoring season for Utah on July 16, 2009 (74 FR 34525). EPA then published more recent data from Utah, Colorado and Kansas relevant to that proposal in a Notice of Data Availability on November 10, 2010 (75 FR 60936) and solicited comment on the applicability of that data to the required monitoring season at that time. If EPA finalizes the proposed revisions to the ozone monitoring season for Utah, the monitoring season will be extended and EPA anticipates that this would help to address the underlying concern of the commenters. At this point, however, Utah complies with the existing monitoring season requirements of Appendix D.

Comment No. 4: The commenter states that EPA cannot approve Utah's SIP as meeting CAA section 110(a)(2)(L) requirements. Citing 42 U.S.C. section 7661a(b)(3)(B)(v) and 40 CFR 70.9(b)(2)(iv), the commenter argues that Utah's Title V program does not increase permit fees each year in accordance with the Consumer Price Index as required.

EPA Response: EPA disagrees with this comment. As stated in the text of the section, 110(a)(2)(L) is no longer applicable to Title V operating permit programs after approval of such programs. As noted in the NPR, the Administrator's final approval of Utah's Title V operating permit program, including the Title V fee program, became effective on July 10, 1995 (60 FR 30192). Therefore, EPA concludes that the Utah infrastructure SIP for the 1997 ozone NAAQS meets the requirements of section 110(a)(2)(L) with respect to the Title V program.

III. Final Action

In this action, EPA is approving in full the following section 110(a)(2) infrastructure elements for Utah for the 1997 ozone NAAQS: (A), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). EPA is conditionally approving section 110(a)(2)(B) for the 1997 ozone NAAQS, and will fully approve this element if Utah takes the measures detailed in the State's May 12, 2011 commitment letter within one year after the date of this final action. If, however, Utah does not implement the measures specified in its commitment within one year after the date of this action, EPA's conditional approval will automatically revert to disapproval of the infrastructure SIP for section 110(a)(2)(B) for the 1997 ozone NAAQS.

IV. Statutory and Executive Order Reviews

Under the CAA, 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 CAA. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action 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 CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 September 20, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart TT—Utah

■ 2. Section 52.2355 is added to read as follows:

§ 52.2355 Section 110(a)(2) infrastructure requirements.

On December 3, 2007 Jon L. Huntsman, Jr., Governor, State of Utah, submitted a certification letter which provides the State of Utah's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS. On December 21, 2009 M. Cheryl Heying, Director, Utah Division of Air Quality, Department of Environmental Quality for the State of Utah, submitted supporting documentation which provides the State of Utah's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS.

[FR Doc. 2011–18416 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R08–OAR–2009–0809; FRL–9442–1]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submission from the State of Colorado to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of Colorado submitted a certification, dated January 7, 2008, that its SIP met these requirements for the 1997 ozone NAAQS. The certification was determined to be complete on March 27, 2008 (73 FR 16205).

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2009–0809. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Colorado had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 18, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Colorado (76 FR 28707) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Colorado's SIP as meeting the requirements of all section 110(a)(2) elements with respect to the 1997 ozone NAAQS, aside from elements 110(a)(2)(D)(i), 110(a)(2)(I), and the visibility protection requirement of element 110(a)(2)(J), on which EPA did not propose action.[2] EPA received a comment on section 110(a)(2)(E)(ii), and EPA is not finalizing today its proposed approval for this sub-element in order to fully respond to that comment.

EPA proposed to approve element 110(a)(2)(C) for the 1997 ozone NAAQS in the event that the State clarified (or modified) its January 7, 2008 certification to ensure consistency with two rules related to regulation of

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See the NPR (76 FR 28707) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

greenhouse gas (GHG) emissions: ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule''), 75 FR 31514 (June 3, 2010), and ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans'' (''PSD SIP Narrowing Rule''), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of Colorado's prevention of significant deterioration (PSD) program to the extent that it applied PSD permitting to GHG-emissions increases from GHG-emitting sources below thresholds set in the Tailoring Rule. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of Colorado's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its February 1, 2008 certification, Colorado relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposed approval of the Colorado Infrastructure SIP for infrastructure element (C) if either the State clarified (or modified) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acted to withdraw from EPA consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. On May 10, 2011, EPA received a letter from Colorado clarifying that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010.[3]

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[4] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may

[3] Colorado's May 10, 2011 clarification letter is available in the docket for this action.

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[8] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[10] Within this

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] See, *e.g., Id.,* 70 FR 25,162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions To Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[10] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from

guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.'' [12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[16]

II. Response to Comments

EPA received one letter on June 17, 2011 containing comments from

William T, Harnett, Director Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[11] *Id.,* at page 2.

[12] *Id.,* at attachment A, page 1.

[13] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[15] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[16] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42,342 at 42,344 (July 21,2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

WildEarth Guardians (WG), an environmental organization. The significant comments made in WG's June 17, 2011 letter and EPA's responses to those comments are given below.

Comment No. 1: The commenter claimed that Colorado ''lacks adequate funding in accordance with CAA section 110(a)(2)(E)(i).'' As evidence of this question of sufficient funding, the commenter cited a Colorado Legislative Council (CLC) fiscal note stating that the Colorado Air Pollution Control Division's (APCD) resources are inadequate to process all of the approximately 2,500 to 3,000 air permit applications the State receives annually, causing a backlog of approximately 1,200 unprocessed permits as of April 2011. The commenter argued that this indicates Colorado lacks adequate resources to implement its SIP (in particular, permitting programs) and that the SIP is therefore deficient with respect to section 110(a)(2)(E)(i).

The commenter attributed APCD's lack of adequate resources to the State charging Title V permit applicants permit fees ''far below the minimum requirements under Title V.'' The commenter described the fees charged by the State and compared them to amounts in an EPA memorandum discussing the presumptive minimum fee for 40 CFR part 70 (title V) programs. Although the commenter noted that the State does charge a variety of fees in connection with the title V program, the commenter argued that there is no indication that the fees charged by the State, in aggregate, meet the presumptive minimum fee.

Finally, the commenter used the same arguments to claim EPA does not have an adequate basis to approve Colorado's SIP for the requirements of CAA section 110(a)(2)(L).

EPA Response: EPA disagrees with the commenter's conclusions concerning the adequacy of the Colorado infrastructure SIP with respect to both section 110(a)(2)(E)(i) and (L). First, with regard to the reported statement by the CLC, EPA notes that the commenter in a number of places referred to this as a statement by ''Colorado'' as though the CLC is the equivalent of the State. However, the cited document is an analysis by the CLC staff of a Colorado Senate bill. The CLC staff is a nonpartisan research arm of the State Assembly; in other words, the CLC staff is part of the legislative branch of the State government. EPA has no reason to question the conclusions of the CLC, but those conclusions are not the equivalent of an official statement by the State itself with respect to the issue relevant in this action.

On the other hand, Colorado's infrastructure SIP certification that is before EPA for approval was submitted by the director of the Colorado Department of Public Health and Environment (CDPHE), an executive branch agency that includes the Colorado APCD. EPA considers the submission to have come from the organization within the State that is the best judge of the overall resources available for implementation of the SIP. In its certification, CDPHE discussed the budget and staff of the APCD and indicated that both were sufficient to carry out Colorado's SIP. Section 110(a)(2)(E) requires that the SIP provide (among other things) necessary assurances that the State have adequate personnel and funding to carry out the SIP. EPA concludes that the certification provides these necessary assurances.

In addition, EPA notes that the CLC statements cited by the commenter speak only to the resources available to process permits. Based on the information provided by the commenter, the backlog would appear to amount to a delay of approximately 5–6 months for a permit. While delays are very problematic, such delays are not evidence of an inability to implement the requirements of the SIP at all. Moreover, the CLC staff analysis noted that the purpose of the bill is to address the backlog; the bill does so by providing for APCD-approved third party contractors to perform modeling for sources not subject to PSD. The bill was signed into law by the Governor of Colorado on June 9, 2011. EPA therefore disagrees with the commenter's conclusion that EPA cannot approve Colorado's infrastructure SIP for section 110(a)(2)(E)(i) on the basis of the statement in the CLC staff analysis.

Turning to fees charged by Colorado under its title V program, EPA notes that, in general, title V programs are not part of the SIP.[17] Thus, such programs are not part of the requirements of section 110(a)(2). Furthermore, section 502(b)(3) of the Act requires not only that title V program fees cover the reasonable direct and indirect costs of developing and administering the title V program, but also requires that the fees be used *only* to cover those costs. EPA therefore disagrees with the comment that the alleged flaws in the title V program with respect to the amount of fees charged by the State prevent EPA from approving the Colorado infrastructure SIP for the 1997 ozone NAAQS for element 110(a)(2)(E)(i). The State provided evidence that its overall budget is sufficient to carry out its obligations and the issue raised by the commenter does not refute that overall budget.

EPA also disagrees with the commenter's argument that the amount of fees charged by the State in its title V program renders the infrastructure SIP unapprovable with respect to section 110(a)(2)(L). As stated in the text of the section, 110(a)(2)(L) is no longer applicable to title V operating permit programs after approval of such programs. As noted in the NPR, 76 FR at 28714, final approval of Colorado's title V operating permit program became effective October 16, 2000 (65 FR 49919). EPA therefore disagrees with the comment that EPA cannot approve Colorado's infrastructure SIP for section 110(a)(2)(L) on the basis of alleged flaws in Colorado's title V program.

Comment No. 2: The commenter argued that Colorado's SIP fails to meet the PSD requirements of section 110(a)(2)(J) due to a lack of ozone impact analysis for new or modified major sources. The commenter alleged a number of specific inadequacies, which EPA discusses separately below.

Comment 2.a: The commenter asserted that the SIP does not require the APCD to ensure that a new or modified source does not cause or contribute to violations of the ozone NAAQS prior to issuance. The commenter cited section 165(a)(3) of the Act and quoted the language of 40 CFR 51.166(k)(1). The commenter later stated that nothing in the Colorado SIP explicitly requires that ozone impacts be addressed in the context of issuing a PSD permit.

EPA Response: EPA disagrees with the commenter's interpretation of the Colorado SIP. Section VI.A.2 of part D of Regulation Number 3 in the Colorado SIP, applicable to sources subject to PSD, specifically requires a source impact analysis.[18] The language of section VI.A.2 mirrors the language in 40 CFR 51.166(k)(1) quoted by the commenter. In addition, there is nothing

[17] In the case of Colorado, the Title V program is not part of the SIP, with the exception of the fee program. Section 110(a)(2)(E)(i) requires adequate resources to carry out the SIP. As the Title V program—except the fee program itself—is not part of the SIP, 110(a)(2)(E)(i) does not require an assessment of whether the fees are adequate to implement the Title V program in its entirety.

[18] This provision was previously in part B of Regulation Number 3. On May 31, 2011, Region 8 finalized an action that (among other things) approved Colorado's reorganization of its PSD program into the new part D of Regulation Number 3. The notice of the final action has not yet been published in the **Federal Register**, but a copy of Colorado's submittal and the signed notice can be found in Docket No. [xxx].

in this section or any other section of the SIP that exempts sources from carrying out the source impact analysis for the 1997 ozone NAAQS. Nor does the commenter cite any provision of the SIP that creates such an exemption. EPA concludes that the commenter is therefore in error in stating that the Colorado SIP does not require the source impact analysis set out in 40 CFR 51.166(k)(1). Furthermore, section VI.A.2 requires the owner or operator of the proposed new source or modification to demonstrate that the construction or modification of the source will not cause or contribute to a violation of any NAAQS. Such language includes the 1997 8-hour ozone NAAQS; thus the commenter is also in error in stating that the SIP does not specifically require ozone impacts to be addressed.

Comment 2.b: The commenter stated that the SIP is deficient because it does not identify any significant impact levels for ozone.

EPA Response: EPA has not identified significant impact levels (SILs) for ozone.[19] The comment therefore does not provide any basis for EPA to change its proposed approval of the Colorado infrastructure SIP for section 110(a)(2)(C) or (J) for the 1997 ozone NAAQS.

Comment 2.c: The commenter asserted that section VI.A.3.e of Part D of Regulation Number 3 ''explicitly allows the owner or operator of a proposed major source or major modification to forego a pre-construction ozone analysis altogether.''

EPA Response: EPA disagrees with the commenter's characterization of the Colorado SIP. First, EPA notes that section VI.A.3.e (and the parallel provision in 40 CFR 51.166(m)(1)(v)) applies only if a proposed major stationary source or major modification of volatile organic compounds (VOCs) meets the requirements of 40 CFR part 51, Appendix S, Section IV, including, in particular, the requirement to satisfy the lowest achievable emissions rate (LAER) for VOCs. Second, the commenter appears to misunderstand the scope of this provision. Contrary to the commenter's assertion, the provision does not exempt any sources from the requirement to perform the source impact analysis in section VI.A.2 (discussed in the response to comment 2.a above). Instead, the provision allows sources that (among other things) employ LAER for VOCs to use post-construction monitoring to replace the pre-application air quality analysis requirements of section VI.A.3.a. This option is specifically provided for in 40 CFR 51.166(m)(1)(v).

Comment 2.d: The commenter alleged that the SIP does not meet the requirements of 40 CFR 51.166(l)(1), which requires the SIP to base applications of air quality modeling in PSD permitting on the applicable models, data bases, and other requirements specified in Appendix W of 40 CFR part 51, and requires modification and substitution of such models to be approved by the Administrator. The commenter also asserted that the Colorado SIP does not specify any approved methodology for analyzing ozone impacts, contrary to PSD requirements under the CAA.

EPA Response: EPA disagrees with the commenter's reading of the requirements of the Colorado SIP. The Colorado SIP includes section VIII.A of part A of Regulation Number 3, which specifically requires estimates of ambient air concentrations required under Regulation Number 3 to be based on applicable models, data bases, and other requirements generally required by the EPA. Although section VIII.A does not specifically reference Appendix W, in the context of the source impact analysis in section VI.A.2 for PSD permitting, we interpret this language to include the requirements specified in Appendix W. In addition, section VIII.A requires any modification or substitution of a model to be subject to public notice and comment and to be approved in writing by EPA (which we interpret to mean the Administrator or her delegee). EPA therefore disagrees with the comment that the Colorado SIP does not meet the requirements of 40 CFR 51.166(l)(1). Furthermore, the comment implies that the Colorado SIP must specify an approved methodology for analyzing ozone impacts, but did not explain what provision creates such a requirement for the Colorado SIP. EPA therefore disagrees with the comment that the Colorado SIP is contrary to PSD requirements under the Act.

Comment 2.e: The commenter stated that the APCD has not interpreted its SIP to require an analysis of ozone impacts. As evidence, the commenter quoted the following statement in APCD's modeling guidance: ''ozone modeling is not routinely requested for construction permits, although it could be in unusual cases such as situations where the Division believes ozone standards could realistically be violated by the proposed source or modification.''

EPA Response: EPA disagrees with the commenter's characterization of APCD's position. EPA first notes that the quoted language is in the chapter of the APCD modeling guidance regarding the demonstration to be made for construction permits for *minor* sources. While the relevant chapter of the APCD modeling guidance (regarding new major stationary sources and major modifications) does refer to the minor source chapter, it is not clear that the statement in the minor source chapter about the frequency of requests for ozone modeling applies to sources subject to PSD. Furthermore, the modeling guidance elsewhere states (see pages 7–9) that a source impact analysis (as discussed in the response to comment 2.a above and as required by the SIP) must be performed for sources subject to PSD.

As discussed above in the response to comment 2.d, the Colorado SIP requires estimates of ambient air concentrations to be based on the applicable models, data bases, and other requirements generally required by the EPA, which EPA interprets to include the requirements of Appendix W of 40 CFR part 51, Guideline on Air Quality Models. Section 5.2.1 of Appendix W includes the Guideline recommendations for models to be utilized in assessing ambient air quality impacts for ozone. Section 5.2.1.c provides that the model users (state and local permitting authorities and permitting applicants) should work with the appropriate EPA Regional Office on a case-by-case basis to determine an adequate method for performing an air quality analysis for assessing ozone impacts. Due to the complexity of modeling ozone and the dependency on the regional characteristics of atmospheric conditions, this is an appropriate approach for assessing ozone impacts rather than specifying one particular preferred model nationwide, which may not be appropriate in all circumstances. Instead, the choice of method ''depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office * * * '' Appendix W Section 5.2.1.c. Therefore, it is appropriate for permitting authorities to consult and work with EPA Regional Offices as described in Appendix W, including section 3.0.b and c, 3.2.2, and 3.3, to determine the appropriate approach to assess ozone impacts as required for sources subject to PSD. Although EPA has not selected one particular preferred model in Appendix A to Appendix W (Summaries of Preferred Air Quality Models) for conducting ozone impact analyses for individual sources, state/

[19] For an explanation and discussion of SILs, in the context of PM2.5, see 75 FR 64864 (Oct. 20, 2010).

local permitting authorities must comply with the appropriate PSD Federal Implementation Plan (FIP) or SIP requirements with respect to ozone.

EPA has had a standard approach in its PSD SIP and FIP rules of not mandating the use of a particular model for all circumstances, instead treating the choice of a particular method for analyzing ozone impacts as circumstance-dependent. EPA then determines whether the State's implementation plan revision submittal meets the PSD SIP requirements. As explained above, in this case the Colorado SIP meets the requirements of 40 CFR part 51.166(k) and (l).

III. Final Action

In this action, EPA is approving in full the following section 110(a)(2) infrastructure elements for Colorado for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (J), (K), (L), and (M). EPA is taking no action today on section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS. EPA will address this sub-element in a later action.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 USC 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 CAA. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action 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 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 September 20, 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, Carbon monoxide, Incoporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart G—Colorado

■ 2. Section 52.353 is added to read as follows:

§ 52.353 Section 110(a)(2) infrastructure requirements.

On January 7, 2008 James B. Martin, Executive Director of the Colorado Department of Public Health and Environment for the State of Colorado, submitted a certification letter which provides the State of Colorado's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS.

[FR Doc. 2011–18421 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0301; FRL–9441–6]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-hour Ozone National Ambient Air Quality Standards; South Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) submission from the State of South Dakota to demonstrate that the SIP meets the requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements''. The State of South Dakota

submitted a certification, dated February 1, 2008, that its SIP met these requirements for the 1997 ozone NAAQS; the certification was determined to be complete on March 27, 2008. In addition, EPA is partially approving a June 14, 2010 SIP submittal from the State that revises the State's Prevention of Significant Deterioration (PSD) program.

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0301. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that South Dakota had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 12, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of South Dakota (76 FR 27622) to act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of South Dakota's SIP as meeting the requirements of all section 110(a)(2) elements with respect to the 1997 ozone NAAQS, aside from elements 110(a)(2)(D)(i), 110(a)(2)(I), and the visibility protection requirement of element 110(a)(2)(J), on which EPA did not propose action.[2]

EPA proposed to approve element 110(a)(2)(C) for the 1997 ozone NAAQS in the event that the State clarified (or modified) its February 1, 2008 certification to ensure consistency with two rules related to regulation of greenhouse gas (GHG) emissions: ''Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule'' (''Tailoring Rule''), 75 FR 31514 (June 3, 2010), and ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans'' (''PSD SIP Narrowing Rule''), 75 FR 82536 (Dec. 30, 2010). In the PSD SIP Narrowing Rule, EPA withdrew its previous approval of South Dakota's prevention of significant deterioration (PSD) program to the extent that it applied PSD permitting to greenhouse gas (GHG) emissions increases from GHG-emitting sources below thresholds set in the Tailoring Rule. EPA withdrew its approval on the basis that the State lacked sufficient resources to issue PSD permits to such sources at the statutory thresholds in effect in the previously-approved PSD program. After the PSD SIP Narrowing Rule, the portion of South Dakota's PSD SIP from which EPA withdrew its approval had the status of having been submitted to EPA but not yet acted upon. In its February 1, 2008 certification, South Dakota relied on its PSD program as approved at that date—which was before December 30, 2010, the effective date of the PSD SIP Narrowing Rule—to satisfy the requirements of infrastructure element 110(a)(2)(C). Given EPA's basis for the PSD SIP Narrowing Rule, EPA proposed approval of the South Dakota Infrastructure SIP for infrastructure element (C) if either the State clarified (or modified) its certification to make clear that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010, and for which the State has sufficient resources to implement, or the State acted to withdraw from EPA

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

[2] See the NPR (76 FR 27622) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

consideration the remaining portion of its PSD program submission that would have applied PSD permitting to GHG sources below the Tailoring Rule thresholds. On May 9, 2011, EPA received a letter from South Dakota (dated May 5, 2011) clarifying that the State relies only on the portion of the PSD program that remains approved after the PSD SIP Narrowing Rule issued on December 30, 2010.[3]

In the May 12, 2011 NPR, EPA also proposed action on revisions to Administrative Rules of South Dakota (ARSD) Chapter 74:36:09 (PSD) from South Dakota's June 14, 2010 SIP submission. The revisions to the State's PSD program updated the date of incorporation by reference of the Federal rules at 40 CFR 52.21 to July 1, 2009. EPA proposed to approve this revision with the following exception. Consistent with the Tailoring Rule and the SIP PSD Narrowing Rule, EPA proposed to disapprove the revision of ARSD 74:36:09 in the June 14, 2010 submission to the extent that the revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below Tailoring Rule thresholds.

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and PM2.5 NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[4] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for Prevention of Significant Deterioration programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the

[3] South Dakota's May 5, 2011 clarification letter is available in the docket for this action.

[4] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[5] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[6]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[7] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[8] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[9]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 PM2.5 NAAQS.[10] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.'' [11] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the

[5] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[6] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005)(defining, among other things, the phrase ''contribute significantly to nonattainment'').

[7] See, *e.g., Id.,* 70 FR 25,162, at 63–65 (May 12, 2005)(explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[8] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8–Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[10] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and PM2.5 National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division, to Air Division Directors, Regions I–X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 PM2.5 NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle (PM2.5) National Ambient Air Quality Standards (NAAQS),'' from William T. Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I–X, dated September 25, 2009 (the ''2009 Guidance'').

[11] *Id.,* at page 2.

required elements.'' [12] EPA also stated its belief that with one exception, these requirements were ''relatively self explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.'' [13] For the one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 PM2.5 NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 PM2.5 NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 PM2.5 NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[16]

II. Response to Comments

EPA did not receive any comments on the May 12, 2011, NPR (76 FR 27622).

III. Final Action

In this action, EPA is approving the following section 110(a)(2) infrastructure elements for South Dakota for the 1997 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), (M). EPA is also approving the portion of South Dakota's June 14, 2010 SIP submission that revises South Dakota's PSD program to incorporate by reference the Federal program at 40 CFR 52.21 as of July 1, 2009, except to the extent that revision applies PSD permitting to GHG emissions increases from GHG-emitting sources below the thresholds set out in the Tailoring Rule, 75 FR 31514.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions,

[12] *Id.,* at attachment A, page 1.

[13] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self explanatory,'' and indeed is sufficiently ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[14] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[15] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[16] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42,342 at 42,344 (July 21,2010)(proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011)(final disapproval of such provisions).

EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action 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 USC 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 USC 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 CAA; and,
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 September 20, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Acting Regional Administrator. Region 8.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

■ 2. Section 52.2170 is amended by:

■ a. In paragraph (c)(1) revise the entries under 74:36:09, Prevention of Significant Deterioration, for ''74:36:09:02'' and ''74:36:09:03''.

■ b. In paragraph (e), add entry for ''XI'', Section 110(a)(2) Infrastructure Requirements for the 1997 8-Hour Ozone NAAQS. The revisions and addition read as follows:

Subpart QQ—South Dakota

§ 52.2170 Identification of Plan.

* * * * *

(c) * * *

(1) * * *

State citation	Title/subject	State effective date	EPA approval date and citation	Explanations
* *	*	*	* *	*
74:36:09 Prevention of Significant Deterioration				
* *	*	*	* *	*
74:36:09:02	Prevention of significant deterioration.	6/28/10	6/30/11, 7/22/11 [insert page number where the document begins].	
74:36:09:03	Public participation	6/28/10	6/30/11, 7/22/11 [insert page number where the document begins].	

* * * * *

(e) * * *

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/adopted date	EPA approval data and citation[5]	Explanations
* *		* *	* *	*
XI. Section 110(a)(2) Infrastructure Requirements for the 1997 8-hour Ozone NAAQS.	Statewide	2/1/08	6/30/11, 7/22/11 [insert page number where the document begins].	

* * * * *

[FR Doc. 2011–18425 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0298; FRL–9440–6]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is partially approving and partially disapproving the State Implementation Plan (SIP) submission from the State of Montana to demonstrate that the SIP meets the requirements of Sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the ''infrastructure elements'' of section 110(a)(2). The State of Montana submitted two certifications, dated November 28, 2007 and December 22, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The November 28, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205).

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0298. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kathy Dolan, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. 303–312–6142, *dolan.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

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I. Background

On July 18, 1997, EPA promulgated new NAAQS for ozone based on 8-hour average concentrations. The 8-hour averaging period replaced the previous 1-hour averaging period, and the level of the NAAQS was changed from 0.12 parts per million (ppm) to 0.08 ppm (62 FR 38856). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several ''infrastructure elements,'' listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time a state develops and submits its SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions a state's existing SIP already contains. In the case of the 1997 ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with previous NAAQS. In a guidance issued on October 2, 2007, EPA noted that, to the extent an existing SIP already meets the section 110(a)(2) requirements, states need only to certify that fact via a letter to EPA.[1]

On March 27, 2008, EPA published a final rule entitled, ''Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone NAAQS'' (73 FR 16205). In the rule, EPA made a finding for each state that it had submitted or had failed to submit a complete SIP that provided the basic program elements of section 110(a)(2) necessary to implement the 1997 8-hour ozone NAAQS. In particular, EPA found that Montana had submitted a complete SIP (''Infrastructure SIP'') to meet these requirements.

On May 19, 2011, EPA published a notice of proposed rulemaking (NPR) for the State of Montana (76 FR 28934) to

[1] Memorandum from William T. Harnett, Director, Air Quality Policy Division, ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' (Oct. 2, 2007).

act on the State's Infrastructure SIP for the 1997 ozone NAAQS. Specifically, in the NPR EPA proposed approval of Montana's SIP as meeting the requirements of section 110(a)(2) elements (A), (B), (D)(ii), (E), (F), (G), (H), (K), (L) and (M) with respect to the 1997 ozone NAAQS. EPA proposed to disapprove 110(a)(2) elements (C) and (J) on the basis that Montana's SIP-approved Prevention of Significant Deterioration (PSD) program does not properly regulate nitrogen oxides as an ozone precursor. EPA did not propose action on elements (D)(i), (I), and the visibility protection requirement of element (J).[2] EPA received a comment on section 110(a)(2)(E)(ii), and EPA is not finalizing today its proposed approval for this sub-element in order to fully respond to that comment.

Scope of Infrastructure SIPs

EPA is currently acting upon SIPs that address the infrastructure requirements of CAA section 110(a)(1) and (2) for ozone and $PM_{2.5}$ NAAQS for various states across the country. Commenters on EPA's recent proposals for some states raised concerns about EPA statements that it was not addressing certain substantive issues in the context of acting on the infrastructure SIP submissions.[3] The commenters specifically raised concerns involving provisions in existing SIPs and with EPA's statements that it would address two issues separately and not as part of actions on the infrastructure SIP submissions: (i) Existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); and (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA (''director's discretion''). EPA notes that there are two other substantive issues for which EPA likewise stated that it would address the issues separately: (i) Existing provisions for minor source new source review programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs (''minor source new source review (NSR)''); and (ii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80,186 (December 31, 2002), as amended by 72 FR 32,526 (June 13, 2007) (''NSR Reform''). In light of the comments, EPA now believes that its statements in various proposed actions on infrastructure SIPs with respect to these four individual issues should be explained in greater depth with respect to these issues.

EPA intended the statements in the proposals concerning these four issues merely to be informational, and to provide general notice of the potential existence of provisions within the existing SIPs of some states that might require future corrective action. EPA did not want states, regulated entities, or members of the public to be under the misconception that the Agency's approval of the infrastructure SIP submission of a given state should be interpreted as a reapproval of certain types of provisions that might exist buried in the larger existing SIP for such state. Thus, for example, EPA explicitly noted that the Agency believes that some states may have existing SIP approved SSM provisions that are contrary to the CAA and EPA policy, but that ''in this rulemaking, EPA is not proposing to approve or disapprove any existing state provisions with regard to excess emissions during SSM of operations at facilities.'' EPA further explained, for informational purposes, that ''EPA plans to address such State regulations in the future.'' EPA made similar statements, for similar reasons, with respect to the director's discretion, minor source NSR, and NSR Reform issues. EPA's objective was to make clear that approval of an infrastructure SIP for these ozone and $PM_{2.5}$ NAAQS should not be construed as explicit or implicit reapproval of any existing provisions that relate to these four substantive issues.

Unfortunately, the commenters and others evidently interpreted these statements to mean that EPA considered action upon the SSM provisions and the other three substantive issues to be integral parts of acting on an infrastructure SIP submission, and therefore that EPA was merely postponing taking final action on the issue in the context of the infrastructure SIPs. This was not EPA's intention. To the contrary, EPA only meant to convey its awareness of the potential for certain types of deficiencies in existing SIPs, and to prevent any misunderstanding that it was reapproving any such existing provisions. EPA's intention was to convey its position that the statute does not require that infrastructure SIPs address these specific substantive issues in existing SIPs and that these issues may be dealt with separately, outside the context of acting on the infrastructure SIP submission of a state. To be clear, EPA did not mean to imply that it was not taking a full final agency action on the infrastructure SIP submission with respect to any substantive issue that EPA considers to be a required part of acting on such submissions under section 110(k) or under section 110(c). Given the confusion evidently resulting from EPA's statements, however, we want to explain more fully the Agency's reasons for concluding that these four potential substantive issues in existing SIPs may be addressed separately.

The requirement for the SIP submissions at issue arises out of CAA section 110(a)(1). That provision requires that states must make a SIP submission ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof)'' and that these SIPS are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must meet. EPA has historically referred to these particular submissions that states must make after the promulgation of a new or revised NAAQS as ''infrastructure SIPs.'' This specific term does not appear in the statute, but EPA uses the term to distinguish this particular type of SIP submission designed to address basic structural requirements of a SIP from other types of SIP submissions designed to address other different requirements, such as ''nonattainment SIP'' submissions required to address the nonattainment planning requirements of part D, ''regional haze SIP'' submissions required to address the visibility protection requirements of CAA section 169A, NSR permitting program submissions required to address the requirements of part D, and a host of other specific types of SIP submissions that address other specific matters.

Although section 110(a)(1) addresses the timing and general requirements for these infrastructure SIPs, and section 110(a)(2) provides more details concerning the required contents of these infrastructure SIPs, EPA believes that many of the specific statutory

[2] See the NPR (76 FR 28934) for further explanation regarding the omission of elements 110(a)(2)(D)(i) and 110(a)(2)(I) from the proposal.

[3] See, Comments of Midwest Environmental Defense Center, dated May 31, 2011. Docket # EPA–R05–OAR–2007–1179 (adverse comments on proposals for three states in Region 5). EPA notes that these public comments on another proposal are not relevant to this rulemaking and do not have to be directly addressed in this rulemaking. EPA will respond to these comments in the appropriate rulemaking action to which they apply.

provisions are facially ambiguous. In particular, the list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive provisions, and some of which pertain to requirements for both authority and substantive provisions.[4] Some of the elements of section 110(a)(2) are relatively straightforward, but others clearly require interpretation by EPA through rulemaking, or recommendations through guidance, in order to give specific meaning for a particular NAAQS.[5]

Notwithstanding that section 110(a)(2) states that ''each'' SIP submission must meet the list of requirements therein, EPA has long noted that this literal reading of the statute is internally inconsistent, insofar as section 110(a)(2)(I) pertains to nonattainment SIP requirements that could not be met on the schedule provided for these SIP submissions in section 110(a)(1).[6] This illustrates that EPA must determine which provisions of section 110(a)(2) may be applicable for a given infrastructure SIP submission. Similarly, EPA has previously decided that it could take action on different parts of the larger, general ''infrastructure SIP'' for a given NAAQS without concurrent action on all subsections, such as section 110(a)(2)(D)(i), because the Agency bifurcated the action on these latter ''interstate transport'' provisions within section 110(a)(2) and worked with states to address each of the four prongs of section 110(a)(2)(D)(i) with substantive administrative actions proceeding on different tracks with different schedules.[7] This illustrates that EPA may conclude that subdividing the applicable requirements of section 110(a)(2) into separate SIP actions may sometimes be appropriate for a given NAAQS where a specific substantive action is necessitated, beyond a mere submission addressing basic structural aspects of the SIP. Finally, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS and the attendant infrastructure SIP submission for that NAAQS. For example, the monitoring requirements that might be necessary for purposes of section 110(a)(2)(B) for one NAAQS could be very different than what might be necessary for a different pollutant. Thus, the content of an infrastructure SIP submission to meet this element from a state might be very different for an entirely new NAAQS, versus a minor revision to an existing NAAQS.[8]

Similarly, EPA notes that other types of SIP submissions required under the statute also must meet the requirements of section 110(a)(2), and this also demonstrates the need to identify the applicable elements for other SIP submissions. For example, nonattainment SIPs required by part D likewise have to meet the relevant subsections of section 110(a)(2) such as section 110(a)(2)(A) or (E). By contrast, it is clear that nonattainment SIPs would not need to meet the portion of section 110(a)(2)(C) that pertains to part C, *i.e.,* the PSD requirement applicable in attainment areas. Nonattainment SIPs required by part D also would not need to address the requirements of section 110(a)(2)(G) with respect to emergency episodes, as such requirements would not be limited to nonattainment areas. As this example illustrates, each type of SIP submission may implicate some subsections of section 110(a)(2) and not others.

Given the potential for ambiguity of the statutory language of section 110(a)(1) and (2), EPA believes that it is appropriate for EPA to interpret that language in the context of acting on the infrastructure SIPs for a given NAAQS. Because of the inherent ambiguity of the list of requirements in section 110(a)(2), EPA has adopted an approach in which it reviews infrastructure SIPs against this list of elements ''as applicable.'' In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the purpose of the submission or the NAAQS in question, would meet each of the requirements, or meet each of them in the same way. EPA elected to use guidance to make recommendations for infrastructure SIPs for these NAAQS.

On October 2, 2007, EPA issued guidance making recommendations for the infrastructure SIP submissions for both the 1997 8-hour ozone NAAQS and the 1997 $PM_{2.5}$ NAAQS.[9] Within this guidance document, EPA described the duty of states to make these submissions to meet what the Agency characterized as the ''infrastructure'' elements for SIPs, which it further described as the ''basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards.''[10] As further identification of these basic structural SIP requirements, ''attachment A'' to the guidance document included a short description of the various elements of section 110(a)(2) and additional information about the types of issues that EPA considered germane in the context of such infrastructure SIPs. EPA emphasized that the description of the basic requirements listed on attachment A was not intended ''to constitute an interpretation of'' the requirements, and was merely a ''brief description of the required elements.''[11] EPA also stated its belief that with one exception, these requirements were ''relatively self-explanatory, and past experience with SIPs for other NAAQS should enable States to meet these requirements with assistance from EPA Regions.''[12] For the

[4] For example, section 110(a)(2)(E) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a substantive program to address certain sources as required by part C of the CAA; section 110(a)(2)(G) provides that states must have both legal authority to address emergencies and substantive contingency plans in the event of such an emergency.

[5] For example, section 110(a)(2)(D)(i) requires EPA to be sure that each SIP contains adequate provisions to prevent significant contribution to nonattainment of the NAAQS in other states. This provision contains numerous terms that require substantial rulemaking by EPA in order to determine such basic points as what constitutes significant contribution. See, *e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NOx SIP Call; Final Rule,'' 70 FR 25,162 (May 12, 2005) (defining, among other things, the phrase ''contribute significantly to nonattainment'').

[6] See, *e.g., Id.,* 70 FR 25–162, at 63–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] EPA issued separate guidance to states with respect to SIP submissions to meet section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS. See, ''Guidance for State Implementation Plan (SIP) Submissions to Meet-Current Outstanding Obligations Under Section 110(a)(2)(D)(i) for the 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division OAQPS, to Regional Air Division Director, Regions I–X, dated August 15, 2006.

[8] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[9] See, ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards,'' from William T. Harnett, Director, Air Quality Policy Division, to Air Division Directors, Regions I—X, dated October 2, 2007 (the ''2007 Guidance''). EPA issued comparable guidance for the 2006 $PM_{2.5}$ NAAQS entitled ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS),'' from William T, Harnett, Director, Air Quality Policy Division, to Regional Air Division Directors, Regions I—X, dated September 25, 2009 (the ''2009 Guidance'').

[10] *Id.,* at page 2.

[11] *Id.,* at attachment A, page 1.

[12] *Id.,* at page 4. In retrospect, the concerns raised by commenters with respect to EPA's approach to some substantive issues indicates that the statute is not so ''self-explanatory,'' and indeed is sufficiently

one exception to that general assumption, however, *i.e.,* how states should proceed with respect to the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS, EPA gave much more specific recommendations. But for other infrastructure SIP submittals, and for certain elements of the submittals for the 1997 $PM_{2.5}$ NAAQS, EPA assumed that each state would work with its corresponding EPA regional office to refine the scope of a state's submittal based on an assessment of how the requirements of section 110(a)(2) should reasonably apply to the basic structure of the SIP for the NAAQS in question.

Significantly, the 2007 Guidance did not explicitly refer to the SSM, director's discretion, minor source NSR, or NSR Reform issues as among specific substantive issues EPA expected states to address in the context of the infrastructure SIPs, nor did EPA give any more specific recommendations with respect to how states might address such issues even if they elected to do so. The SSM and director's discretion issues implicate section 110(a)(2)(A), and the minor source NSR and NSR Reform issues implicate section 110(a)(2)(C). In the 2007 Guidance, however, EPA did not indicate to states that it intended to interpret these provisions as requiring a substantive submission to address these specific issues in the context of the infrastructure SIPs for these NAAQS. Instead, EPA's 2007 Guidance merely indicated its belief that the states should make submissions in which they established that they have the basic SIP structure necessary to implement, maintain, and enforce the NAAQS. EPA believes that states can establish that they have the basic SIP structure, notwithstanding that there may be potential deficiencies within the existing SIP. Thus, EPA's proposals mentioned these issues not because the Agency considers them issues that must be addressed in the context of an infrastructure SIP as required by section 110(a)(1) and (2), but rather because EPA wanted to be clear that it considers these potential existing SIP problems as separate from the pending infrastructure SIP actions.

EPA believes that this approach to the infrastructure SIP requirement is reasonable, because it would not be feasible to read section 110(a)(1) and (2) to require a top to bottom, stem to stern, review of each and every provision of an existing SIP merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts that, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA considers the overall effectiveness of the SIP. To the contrary, EPA believes that a better approach is for EPA to determine which specific SIP elements from section 110(a)(2) are applicable to an infrastructure SIP for a given NAAQS, and to focus attention on those elements that are most likely to need a specific SIP revision in light of the new or revised NAAQS. Thus, for example, EPA's 2007 Guidance specifically directed states to focus on the requirements of section 110(a)(2)(G) for the 1997 $PM_{2.5}$ NAAQS because of the absence of underlying EPA regulations for emergency episodes for this NAAQS and an anticipated absence of relevant provisions in existing SIPs.

Finally, EPA believes that its approach is a reasonable reading of section 110(a)(1) and (2) because the statute provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the Agency to take appropriate tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or otherwise to comply with the CAA.[13] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[14] Significantly, EPA's determination that an action on the infrastructure SIP is not the appropriate time and place to address all potential existing SIP problems does not preclude the Agency's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on the infrastructure SIP, EPA believes that section 110(a)(2)(A) may be among the statutory bases that the Agency cites in the course of addressing the issue in a subsequent action.[15]

II. Response to Comments

EPA received one letter on June 20, 2011 containing comments from WildEarth Guardians (WG), an environmental organization. The significant comments made in WG's June 20, 2011 letter and EPA's responses to those comments are given below.

Comment No. 1: The commenter states that Montana's SIP fails to meet the PSD requirements of section 110(a)(2)(J) due to a lack of ozone impact analysis for new or modified major sources. The commenter alleges a number of specific inadequacies, which EPA discusses separately below.

Comment 1.a: The commenter states that the SIP does not require the State PSD permitting authority to ensure that a new or modified source does not cause or contribute to violations of the ozone NAAQS prior to issuance. The commenter cites section 165(a)(3) of the Act and quotes the language of 40 CFR 51.166(k)(1). The commenter later states that nothing in the SIP explicitly requires that ozone impacts be addressed.

EPA Response: EPA disagrees with this comment. ARM 17.8.820, part of the Montana SIP, specifically requires PSD permit applicants to perform a source impact analysis. The language of section ARM 17.8.820 mirrors the language in 40 CFR 51.166(k)(1) quoted by the commenter. In addition, there is nothing in this section or any other section of the SIP that exempts sources from carrying out the source impact analysis for the 1997 ozone NAAQS. Nor does the commenter cite any provision in the SIP that creates such an exemption. The

ambiguous that EPA needs to interpret it in order to explain why these substantive issues do not need to be addressed in the context of infrastructure SIPs and may be addressed at other times and by other means.

[13] EPA has recently issued a SIP call to rectify a specific SIP deficiency related to the SSM issue. See, ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21,639 (April 18, 2011).

[14] EPA has recently utilized this authority to correct errors in past actions on SIP submissions related to PSD programs. See, ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82,536 (Dec. 30, 2010). EPA has previously used its authority under CAA 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, *e.g.,* 61 FR 38,664 (July 25, 1996) and 62 FR 34,641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67,062 (November 16, 2004) (corrections to California SIP); and 74 FR 57,051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] EPA has recently disapproved a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, *e.g.,* 75 FR 42,342 at 42,344 (July 21,2010) (proposed disapproval of director's discretion provisions); 76 FR 4,540 (Jan. 26, 2011) (final disapproval of such provisions).

commenter is therefore in error in stating that the Montana SIP does not require the source impact analysis set out in 40 CFR 51.166(k)(1). Furthermore, ARM 17.8.820 requires the owner or operator of the proposed source or modification to demonstrate that the construction or modification of the source will not cause or contribute to a violation of any NAAQS. Such language includes the 1997 ozone NAAQS; thus the commenter is also in error in stating that the SIP does not specifically require ozone impacts to be addressed.

Comment 1.b: The commenter states that the SIP does not identify any significant impact levels for ozone.

EPA Response: EPA disagrees with the thrust of this comment. EPA has not identified significant impact levels (SILs) for ozone.[16] The comment, therefore, does not provide any basis for EPA to change its proposed approval of the Montana infrastructure SIP for section 110(a)(2)(C) or (J) for the 1997 ozone NAAQS.

Comment 1.c: The commenter states, citing ARM 17.8.818(7)(a)(v), that the SIP indicates ''an ozone analysis may only be required if VOC emissions exceed 100 tons/year.'' The commenter alleges that there is no support for a 100 tpy significant emission rate and that the provision seems at odds with the Act.

EPA Response: EPA disagrees with this comment. First, the commenter misunderstands the scope and application of the cited provision. ARM 17.8.818(7)(a), which mirrors the provision at 40 CFR 51.166(i)(5), provides only for exemptions from the monitoring requirements in ARM 17.8.822 based on concentration thresholds. These thresholds are known as significant monitoring concentrations (SMCs) and are unrelated to the significant emission rates (SERs) in 40 CFR 51.166(b)(23)(i). Furthermore, sources below the SMCs in ARM 17.8.818(7)(a) (and the parallel provision at 40 CFR 51.166(i)(5)) are not exempt from the source impact analysis discussed in the response to comment 2.a above. The commenter is therefore in error in stating that an ozone analysis would not be required for sources emitting less than 100 tpy of VOCs. Finally, the exemption in 17.8.818(7)(a)(v) is specifically provided for in 40 CFR 51.166(i)(5).

Comment 1.d: The commenter states that ARM 17.8.822(7) ''explicitly allows the owner or operator of a proposed major source or major modification to forego a pre-construction ozone analysis altogether,'' instead allowing the Montana Department of Environmental Quality (DEQ) to ''provide post-approval monitoring data for ozone.''

EPA Response: EPA disagrees with this comment. First, EPA notes that section 17.8.822(7), which parallels the provision in 40 CFR 51.166(m)(1)(v), applies only if a proposed major stationary source or major modification of volatile organic compounds (VOCs) meets the requirements of subchapter 9, Montana's nonattainment NSR program, including, in particular, the requirement to satisfy the lowest achievable emissions rate (LAER) for VOCs. Second, the commenter appears to misunderstand the scope of this provision. The provision does not exempt sources subject to PSD from the requirement to perform the source impact analysis in ARM 17.8.820 (discussed in the response to comment 1.a above); instead it allows sources that meet certain requirements, including employing LAER for VOCs, to use post-construction monitoring to replace the pre-application air quality analysis requirements of section 17.8.822.

Comment 1.e: The commenter states that the Montana SIP does not meet the requirements of 40 CFR 51.166(l) regarding the use of air quality models.

EPA Response: EPA disagrees with this comment. ARM 17.8.821, part of Montana's SIP-approved PSD program, mirrors the language of 40 CFR 51.166(l).

Comment No. 2: The commenter states that Montana's permitting fees for its Title V program are ''inadequate to ensure the reasonable costs of reviewing and acting upon permit applications and the reasonable costs of implementing and enforcing the terms and conditions of permits are covered.'' The commenter attributes Montana's lack of adequate resources to the State charging Title V permit applicants ''below the minimum requirements under Title V.'' The commenter discusses the fees charged by the State and cites an EPA memorandum discussing the presumptive minimum fee for part 70 (title V) programs. The commenter argues that there is no indication that the fees charged by the State, in aggregate, meet the presumptive minimum fee.

EPA Response: EPA disagrees with this comment. As stated in the text of the section, 110(a)(2)(L) is no longer applicable to Title V operating permit programs after approval of such programs. As noted in the NPR, the Administrator's final approval of Montana's Title V operating permit program, including the Title V fee program, became effective on June 13, 2000 (65 FR 37049). Therefore, EPA concludes that the Montana infrastructure SIP for the 1997 ozone NAAQS meets the requirements of section 110(a)(2)(L) with respect to the Title V program.

III. Final Action

In this action, EPA is approving the following section 110(a)(2) infrastructure elements for Montana for the 1997 ozone NAAQS: (A), (B), (D)(ii), (E)(i), (E)(iii), (F), (G), (H), (K), (L), and (M). EPA is taking no action today on section 110(a)(2)(E)(ii). EPA will address this sub-element in a later action.

In this action, EPA is disapproving section 110(a)(2) infrastructure elements (C) and (J) for the 1997 ozone NAAQS. EPA proposed to disapprove these elements in its 5/19/11 NPR.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations (42 USC 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 CAA. Accordingly, this action merely approves some state law as meeting Federal requirements and disapproves other state law because it does not meet Federal requirements; this action 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 USC 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);

[16] For an explanation and discussion of SILs, in the context of $PM_{2.5}$, see 75 FR 64864 (Oct. 20, 2010).

• 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 USC 272 note) because application of those requirements would be inconsistent with the CAA; and,

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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 September 20, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: June 30, 2011.

James B. Martin,

Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart BB—Montana

■ 2. Section 52.1394 is added to read as follows:

§ 52.1394 Section 110(a)(2) infrastructure requirements.

On December 22, 2009, David L. Klemp, Bureau Chief, Air Resources Management Bureau, of the Montana Department of Environmental Quality submitted a certification letter which provides the State of Montana's SIP provisions which meet the requirements of CAA Section 110(a)(1) and (2) relevant to the 1997 Ozone NAAQS.

[FR Doc. 2011–18419 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002]

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated in the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Deputy Federal Insurance and Mitigation Administrator has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

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 final rule involves no policies that have federalism implications under Executive Order 13132.

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 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.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL) Modified
City of Hampton, Virginia (Independent City) Docket No.: FEMA–B–1097				
Virginia	City of Hampton	Newmarket Creek	Approximately 275 feet downstream of Big Bethel Road.	+9
			Approximately 20 feet upstream of the confluence with Newmarket Creek Tributary.	+22
	City of Hampton	Newmarket Creek Tributary.	At the confluence with Newmarket Creek	+22
			Approximately 30 feet downstream of I–64.	+22

*National Geodetic Vertical Datum.
+North American Vertical Datum.
#Depth in feet above ground.
∧Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Hampton

Maps are available for inspection at the Central Permits Office, 22 Lincoln Avenue, Hampton, VA 23669.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Fayette County, Iowa, and Incorporated Areas Docket No.: FEMA–B–1122			
Otter Creek (City of Elgin)	Approximately 1,550 feet upstream of Cedar Road	+804	Unincorporated Areas of Fayette County.
	Approximately 80 feet downstream of Mill Street	+831	
Otter Creek (City of Oelwein)	Approximately 460 feet upstream of West Charles Street	+1004	Unincorporated Areas of Fayette County.
	At the City of Oelwein corporate limit, approximately 1.4 miles upstream of Lake Oelwein Dam.	+1019	
Turkey River	Approximately 0.3 mile downstream of Center Street	+802	Unincorporated Areas of Fayette County.
	Approximately 1.6 miles upstream of Center Street	+809	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Fayette County

Maps are available for inspection at the Fayette County Courthouse, 114 North Vine Street, West Union, IA 52175.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Ingham County, Michigan (All Jurisdictions) Docket No.: FEMA–B–1122			
Deer Creek	At CSX Railway	+864	City of Williamston, Township of Wheatfield.
	Approximately 0.4 mile upstream of Wallace Street	+864	
Moon and Hamilton County Drain.	At the Detention Area F Control Structure	+861	City of Lansing.
	At I–96/69	+863	
Red Cedar River	Approximately 1.4 miles upstream of the upstream crossing of North Putnam Street.	+868	City of Williamston, Township of Leroy, Township of Locke, Township of Wheatfield, Township of Williamstown, Village of Webberville.
	At Grammer Road North	+875	
Remey Chandler Drain/ Sanderson Drain.	Approximately 0.7 mile downstream of West Lake Lansing Road.	+841	Charter Township of Meridian, City of East Lansing.
	At the upstream side of West Lake Lansing Road	+842	
Willow Creek	Approximately 1,250 feet upstream of U.S. Route 127	+893	Township of Vevay.
	Approximately 0.58 mile upstream of U.S. Route 127	+893	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Charter Township of Meridian
Maps are available for inspection at the Meridian Township Hall, 5151 Marsh Road, Okemos, MI 48864.

City of East Lansing
Maps are available for inspection at City Hall, 410 Abbott Road, East Lansing, MI 48823.

City of Lansing
Maps are available for inspection at City Hall, 124 West Michigan Avenue, Lansing, MI 48933.

City of Williamston
Maps are available for inspection at City Hall, 161 East Grand River Avenue, Williamston, MI 48895.

Township of Leroy
Maps are available for inspection at the Leroy Township Hall, 315 West Walnut Street, Webberville, MI 48892.

Township of Locke
Maps are available for inspection at the Locke Township Hall, 3805 Bell Oak Road, Williamston, MI 48895.

Township of Vevay
Maps are available for inspection at the Vevay Township Hall, 780 South Eden Road, Mason, MI 48854.

Township of Wheatfield
Maps are available for inspection at the Wheatfield Township Hall, 985 East Hold Road, Williamston, MI 48895.

Township of Williamstown
Maps are available for inspection at the Williamstown Township Hall, 4990 North Zimmer Road, Williamston, MI 48895.

Village of Webberville
Maps are available for inspection at the Village Hall, 115 South Main Street, Webberville, MI 48892.

Benton County, Minnesota, and Incorporated Areas Docket No.: FEMA–B–1110			
Mississippi River	Approximately 1.30 miles downstream of 125th Street	+1027	City of Rice.
	Approximately 1.23 miles upstream of 125th Street	+1030	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Rice
Maps are available for inspection at 205 Main Street East, Rice, MN 56367.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Butler County, Nebraska, and Incorporated Areas Docket No.: FEMA–B–1112			
Platte River	Approximately 100 feet downstream of the Saunders County boundary.	+1309	Unincorporated Areas of Butler County.
	Approximately 575 feet downstream of the Polk County boundary.	+1442	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Butler County

Maps are available for inspection at 451 North 5th Street, David City, NE 68632.

Guernsey County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1089			
Clear Fork	Approximately 175 feet downstream of Birmingham Road	+830	Unincorporated Areas of Guernsey County.
	Approximately 0.5 mile upstream of Birmingham Road	+837	
Leatherwood Creek	Approximately 174 feet upstream of Linn Road	+874	Unincorporated Areas of Guernsey County, Village of Quaker City.
	At the upstream side of Eldon Road	+880	
Wills Creek	Approximately 115 feet downstream of CSX Railroad	+802	Unincorporated Areas of Guernsey County.
	Approximately 191 feet upstream of State Route 313	+803	
Wills Creek and Buffalo Creek	Approximately 0.4 mile downstream of State Route 146	+803	Unincorporated Areas of Guernsey County, Village of Pleasant City.
	Approximately 0.5 mile upstream of State Route 146	+806	
Wills Creek at Kimbolton	Approximately 375 feet downstream of Main Street	+776	Unincorporated Areas of Guernsey County.
	Approximately 0.8 mile upstream of Main Street	+777	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Guernsey County

Maps are available for inspection at 62782 Bennett Avenue, Cambridge, OH 43725.

Village of Pleasant City

Maps are available for inspection at 62782 Bennett Avenue, Cambridge, OH 43725.

Village of Quaker City

Maps are available for inspection at 126 Fair Street, Quaker City, OH 43773.

Lucas County, Ohio, and Incorporated Areas Docket No.: FEMA–B–1049			
Barnum Ditch	Just upstream of the confluence with Tifft Ditch	+617	City of Toledo.
	Approximately 350 feet downstream of Willis Boulevard	+626	
Blue Creek	Approximately 1,100 feet upstream of Finzel Road	+640	Unincorporated Areas of Lucas County, Village of Whitehouse.
	At the downstream side of Fulton Lucas Road	+665	
Blystone Ditch	At the upstream side of Dutch Road	+644	Unincorporated Areas of Lucas County, Village of Waterville.
	At the downstream side of Bluebird Train Railroad	+659	
Comstock Ditch	At the upstream side of Brint Road	+675	Unincorporated Areas of Lucas County.
	At the downstream side of Mitchaw Road	+679	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Crane Creek	Approximately 0.6 mile downstream of Nissen Road	+579	Unincorporated Areas of Lucas County.
	Approximately 2,000 feet upstream of Ofper Lentz Road	+584	
Deline Ditch	At the confluence with Heldman Ditch (East)	+606	City of Toledo.
	At the downstream side of Hill Avenue	+629	
Deline Ditch Overflow	At the confluence with Deline Ditch	+614	City of Toledo.
	Just downstream of the divergence from Deline Ditch	+625	
Dennis Ditch	At the confluence with Heldman Ditch (East)	+604	City of Toledo.
	Approximately 875 feet upstream of South Avenue	+623	
Detwiler Ditch	At the upstream side of Summit Street	+578	City of Toledo.
	Approximately 0.56 mile upstream of I–280	+578	
Disher Ditch	At the upstream side of Rupp Road	+640	Unincorporated Areas of Lucas County, Village of Whitehouse.
	At the downstream side of Berkey Southern Highway	+657	
Disher Ditch Overflow	At the confluence with Blue Creek	+640	Village of Whitehouse.
	At the downstream side of Heller Road	+653	
Duck Creek	At mouth at Maumee Bay	+578	City of Oregon, City of Toledo.
	At the downstream side of Consaul Street	+578	
Eisenbraum Ditch	Approximately 175 feet downstream of Elsie Avenue	+618	City of Toledo.
	At the downstream side of West Alexis Highway	+651	
Good Ditch	South of Angola Road near Holland Park Boulevard	+633	Village of Holland.
	South of Angola Road approximately 60 feet west of Holland Park Boulevard.	+633	
Haefner Ditch	At the confluence with Hill Ditch	+604	City of Toledo, Unincorporated Areas of Lucas County.
	At the downstream side of I–475	+638	
Heldman Ditch (East)	At the downstream side of Edgevale Road	+594	City of Toledo, Unincorporated Areas of Lucas County, Village of Ottawa Hills.
	At the downstream side of West Bancroft Street	+665	
Heldman Ditch (West)	At the confluence with Prairie Ditch	+668	Unincorporated Areas of Lucas County.
	At the downstream side of North Crissey Road	+668	
Hill Ditch	At the confluence with Heldman Ditch (East)	+604	City of Toledo, Unincorporated Areas of Lucas County.
	Just downstream of the confluence with Smith Ditch South.	+639	
Jamieson Ditch	At the confluence with Silver Creek	+595	City of Toledo.
	At the downstream side of Lewis Avenue	+600	
Ketcham Ditch	Approximately 700 feet downstream of Jackman Road	+609	City of Toledo.
	At the downstream side of Adella Street	+619	
Lone Oak Ditch	At the upstream side of Winslow Road	+644	Unincorporated Areas of Lucas County, Village of Whitehouse.
	Approximately 70 feet downstream of Berkey Southern Highway.	+657	
Maumee Bay	West of the mouth of Driftmeyer Ditch	+578	City of Oregon, City of Toledo.
	At the northern county boundary	+578	
Maumee River	At mouth at Maumee Bay	+578	City of Toledo.
	At the upstream side of Norfolk Southern Railroad	+578	
Mayer Ditch	At the downstream side of I–475	+636	Unincorporated Areas of Lucas County.
	Approximately 475 feet downstream of Dorr Street	+639	
McPeak Ditch	Approximately 100 feet above the confluence with Tenmile Creek.	+646	City of Sylvania.
	Approximately 1,300 feet upstream of Winding Way	+668	
Mud Creek	At the confluence with Detwiler Creek	+578	City of Toledo.
	At the downstream side of Hoffman Road	+578	
North Branch Ketcham Ditch	At the downstream side of Douglas Road	+620	City of Toledo.
	Approximately 650 feet upstream of Secor Road	+631	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Ottawa River	Approximately 0.91 mile downstream of Summit Street	+578	City of Oregon, City of Toledo.
	At the downstream side of CSX Transportation Railroad	+578	
Otter Creek	At the downstream side of Corduroy Road	+578	City of Toledo.
	At mouth at Maumee Bay	+578	
	At the upstream side of CSX Transportation Railroad	+589	
	Approximately 350 feet upstream of CSX Transportation Railroad.	+589	
	At the upstream side of CSX Transportation Railroad	+590	
	Approximately 475 feet downstream of Dover Place	+590	
Peterson Ditch	At the upstream side of Haughton Drive	+614	City of Toledo.
	Approximately 100 feet upstream of Goddard Road	+615	
Potter Ditch	At the confluence with Heldman Ditch (East)	+635	City of Toledo, Unincorporated Areas of Lucas County.
	At the downstream side of Derbyshire Road	+635	
Schmitz Ditch	At the confluence with Tenmile Creek	+694	Village of Berkey.
	At the downstream side of Lathrop Road	+707	
Schneider Ditch	Just upstream of the confluence with Williams Ditch	+621	City of Toledo.
	At the downstream side of Hill Avenue	+621	
Shantee Creek	At the confluence with Silver Creek	+583	City of Toledo, Unincorporated Areas of Lucas County.
	Approximately 225 feet upstream of Tremainsville Road	+612	
	Approximately 1,100 feet downstream of Summit Street	+578	
	Approximately 300 feet downstream of Hagman Road	+578	
Shantee Creek Overflow Channel 1.	Approximately 175 feet upstream of Lewis Avenue	+599	City of Toledo.
	Just downstream of the divergence from Shantee Creek	+611	
Shantee Creek Overflow Channel 2.	At the confluence with Shantee Creek	+599	City of Toledo.
	Approximately 100 feet downstream of Jackman Road	+609	
Sharp Ditch	At the upstream side of Brint Road	+679	Unincorporated Areas of Lucas County.
	Approximately 1.0 mile upstream of Brint Road	+683	
Silver Creek	At the upstream side of CN North America Railroad	+578	City of Toledo, Unincorporated Areas of Lucas County.
	Approximately 100 feet upstream of Woodview Drive	+639	
Smith Ditch South	At the confluence with Hill Ditch	+639	Unincorporated Areas of Lucas County.
	Approximately 200 feet upstream of Wimbledon Park Boulevard.	+661	
South Branch Silver Creek	At the confluence with Silver Creek	+628	City of Toledo.
	Approximately 1,150 feet upstream of Rambo Lane	+633	
Tenmile Creek	At the upstream side of Herr Road	+668	Unincorporated Areas of Lucas County, Village of Berkey.
	At the downstream side of North Fulton Lucas Road	+708	
Tifft Ditch	Approximately 225 feet upstream of Tremainsville Road	+612	City of Toledo, Unincorporated Areas of Lucas County.
	Approximately 300 feet upstream of Talmadge Road	+634	
Vanderpool Ditch	At the downstream side of McCord Road	+644	Unincorporated Areas of Lucas County.
	Approximately 375 feet downstream of King Road	+656	
Williams Ditch	At the upstream side of Norfolk Southern Railroad	+614	City of Toledo.
	Approximately 175 feet downstream of Hill Avenue	+621	
Wing Ditch	Just upstream of the confluence with Silver Creek	+633	City of Toledo.
	Approximately 75 feet downstream of Merle Street	+637	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Oregon

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected

Maps are available for inspection at 5330 Seaman Road, Oregon, OH 43616.

City of Sylvania

Maps are available for inspection at 6730 Monroe Street, Suite 101, Sylvania, OH 43560.

City of Toledo

Maps are available for inspection at 1 Government Center, Suite 1600, Toledo, OH 43604.

Unincorporated Areas of Lucas County

Maps are available for inspection at 1115 South McCord Road, Holland, OH 43528.

Village of Berkey

Maps are available for inspection at 12360 Sylvania-Metamora Road, Berkey, OH 45304.

Village of Holland

Maps are available for inspection at 1245 Clarion Avenue, Holland, OH 43528.

Village of Ottawa Hills

Maps are available for inspection at 2125 Richards Road, Toledo, OH 43606.

Village of Waterville

Maps are available for inspection at 25 North 2nd Street, Waterville, OH 43566

Village of Whitehouse

Maps are available for inspection at 6925 Providence Street, Whitehouse, OH 43571.

Lamar County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1045

Baker Branch	Approximately 799 feet downstream of Loop 286	+503	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 1,002 feet upstream of Bonham Street	+572	
Baker Branch Tributary #10	Just downstream of the confluence with Baker Branch	+537	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 503 feet upstream of Sherman Street	+560	
Baker Branch Tributary #24	Just upstream of the confluence with Baker Branch	+508	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 59 feet downstream of 7th Street	+513	
Big Sand Creek Tributary #7	Just downstream of the confluence with Big Sandy Creek	+532	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 708 feet upstream of 17th Street	+569	
Big Sandy Creek	Approximately 1,300 feet downstream of Loop 286	+494	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 475 feet upstream of Sherman Street	+571	
Big Sandy Creek Tributary #2	Just upstream of the confluence with Big Sandy Creek	+502	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 647 feet upstream of Lamar Avenue	+546	
Big Sandy Creek Tributary #3	Just upstream of Houston Street	+557	City of Paris, Unincorporated Areas of Lamar County.
	Just upstream of the confluence with Big Sandy Creek	+588	
Big Sandy Creek Tributary #4	Just downstream of the confluence with Big Sandy Creek	+516	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 888 feet upstream of Price Street	+562	
Big Sandy Creek Tributary #8	Just downstream of the confluence with Big Sandy Creek	+546	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 1,045 feet upstream of Hearon Street	+574	
Big Sandy Creek Tributary #16	Just upstream of the confluence with Big Sandy Creek Tributary #4.	+536	City of Paris, Unincorporated Areas of Lamar County.
	Just upstream of Cherry Street	+568	
Cottonwood Branch Tributary #11.	Approximately 75 feet downstream of Old Brookston Road	+516	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 377 feet upstream of Austin Street	+584	
Pine Creek Tributary #12	Approximately 852 feet downstream of the confluence with Pine Creek Tributary #13.	+506	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 194 feet downstream of the confluence with Old City Lake.	+524	
Pine Creek Tributary #13	Just upstream of the confluence with Pine Creek Tributary #12.	+508	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 184 feet upstream of 28th Street	+557	
Smith Creek	Just downstream of the confluence with Smith Creek Tributary #15.	+518	City of Paris, Unincorporated Areas of Lamar County.
	Just upstream of Center Street	+521	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Smith Creek Tributary #15	Just upstream of Center Street	+524	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 236 feet downstream of Houston Street	+588	
Stillhouse Creek Tributary #20	Approximately 227 feet downstream of Spur 139	+514	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 44 feet upstream of Ridgeview Street	+573	
Stillhouse Creek Tributary #21	Just downstream of the confluence with Stillhouse Creek Tributary #20.	+526	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 32 feet downstream of Belmont Street	+581	
Stillhouse Creek Tributary #22	Just downstream of State Highway 195	+508	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 170 feet upstream of Loop 535	+537	
Stillhouse Creek Tributary #23	Just downstream of the confluence with Stillhouse Creek Tributary #22.	+521	City of Paris, Unincorporated Areas of Lamar County.
	Approximately 43 feet downstream of Loop 286	+539	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Paris

Maps are available for inspection at City Hall, 135 Southeast 1st Street, Paris, TX 75460.

Unincorporated Areas of Lamar County

Maps are available for inspection at 119 North Main Street, Paris, TX 75460.

Montague County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1069

Cowskin Creek	Approximately 1,500 feet downstream of the Wise County boundary.	+921	Unincorporated Areas of Montague County.
	Just downstream of the Wise County boundary	+931	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Montague County

Maps are available for inspection at 101 East Franklin Street, Montague, TX 76251.

Walker County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1061

Baldwin Creek	Approximately 2.7 miles downstream of County Highway FM 247.	+244	Unincorporated Areas of Walker County.
	Approximately 1.6 miles downstream of County Highway FM 247.	+261	
Caney Creek	Approximately 0.6 mile upstream of County Highway FM 2296.	+354	Unincorporated Areas of Walker County.
	Approximately 0.6 mile downstream of Evelyn Lane	+374	
Crabb Creek	Approximately 475 feet upstream of North Rocky Creek	+257	Unincorporated Areas of Walker County.
	Approximately 500 feet upstream of I–45/U.S. Route 190	+287	
East Fork (Tanyard Branch)	Approximately 0.5 mile upstream of confluence with Tanyard Branch.	+291	Unincorporated Areas of Walker County.
	Approximately 0.9 mile upstream of confluence with Tanyard Branch.	+298	
Hadley Creek	Just downstream of Rosenwall Road	+250	Unincorporated Areas of Walker County.
	Just upstream of the confluence with North Rocky Creek	+285	
Hendricks Lake	At the confluence with Town Branch	+273	Unincorporated Areas of Walker County.
	Approximately 700 feet downstream of County Highway FM 2821.	+284	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
Mays Creek	Approximately 0.4 mile upstream of County Highway FM 2929.	+320	Unincorporated Areas of Walker County.
	Approximately 2.5 miles upstream of County Highway FM 2929.	+355	
McDonald Creek	Approximately 0.4 mile upstream of West Sunset Drive	+293	Unincorporated Areas of Walker County.
	Just downstream of Spring Drive	+357	
McGary Creek	Approximately 1.8 miles downstream of the confluence with Tributary 6 (McGary Creek).	+279	Unincorporated Areas of Walker County.
	Approximately 1,750 feet downstream of the confluence with Tributary 6 (McGary Creek).	+289	
	Approximately 0.8 mile downstream of Timberwilde Drive	+318	
	Approximately 0.9 mile upstream of Timberwilde Drive	+351	
Parker Creek	Approximately 0.6 mile upstream of Tributary Number 8 (Parker Creek).	+212	Unincorporated Areas of Walker County.
	At the confluence with Town Branch	+260	
Prairie Branch	At the confluence with Raven Lake	+287	Unincorporated Areas of Walker County.
	Just downstream of Camellia Drive	+307	
Robinson Creek	Approximately 1,250 feet upstream of Robinson Road	+283	Unincorporated Areas of Walker County.
	Approximately 0.6 mile downstream of Veterans Memorial Highway.	+333	
Scott Branch	At the confluence with Thickett Branch	+256	Unincorporated Areas of Walker County.
	Approximately 1,250 feet upstream of the confluence with Thickett Branch.	+261	
Shepherd Creek	Approximately 0.71 mile upstream of County Highway FM 2296.	+317	Unincorporated Areas of Walker County.
	Approximately 1.5 miles upstream of the confluence with Tributary 3.	+381	
Tanyard Branch	Approximately 500 feet downstream of the confluence with Tributary Number 2 (Tanyard Branch).	+224	Unincorporated Areas of Walker County.
	Approximately 0.5 mile upstream of U.S. Route 190	+363	
Thickett Branch	Approximately 500 feet downstream of the confluence with Scott Branch.	+256	Unincorporated Areas of Walker County.
	Approximately 800 feet upstream of the confluence with Scott Branch.	+260	
Town Branch	At the confluence with Parker Creek	+260	Unincorporated Areas of Walker County.
	Approximately 1,200 feet upstream of the confluence with Hendricks Lake.	+277	
Tributary 1 (Robinson Creek)	At the confluence with Robinson Creek	+294	Unincorporated Areas of Walker County.
	Approximately 400 feet downstream of Gazebo Street	+329	
Tributary 2 (Tanyard Branch)	At the confluence with Tanyard Branch	+224	Unincorporated Areas of Walker County.
	Approximately 1,200 feet upstream of Robinson Road	+253	
Tributary 5 (McGary Creek)	Approximately 1,250 feet upstream of the confluence with McGary Creek.	+323	Unincorporated Areas of Walker County.
	Just downstream of Timberwilde Drive	+329	
Tributary 6 (McGary Creek)	Approximately 0.9 mile upstream of the confluence with McGary Creek.	+301	Unincorporated Areas of Walker County.
	Approximately 2.17 miles upstream of the confluence with McGary Creek.	+319	
Tributary 9 (Shepherd Creek)	At the confluence with Shepherd Creek	+332	Unincorporated Areas of Walker County.
	Approximately 900 feet downstream of Four Notch Road	+347	
Tributary Number 7 (Hadley Creek).	Approximately 1,200 feet downstream of Cauthen Drive	+256	Unincorporated Areas of Walker County.
	Approximately 1.3 miles upstream of Cauthen Drive	+275	
Tributary Number 8 (Parker Creek).	Approximately 0.9 mile upstream of the confluence with Pain Branch.	+218	Unincorporated Areas of Walker County.
	Approximately 0.9 mile downstream of Albritton Road	+231	
Wayne Creek	Approximately 1,750 feet downstream of Forest Service Road # 236A.	+259	Unincorporated Areas of Walker County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL) Modified	Communities affected
	Approximately 1.1 miles upstream of the confluence with Ford Branch.	+298	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Walker County

Maps are available for inspection at 1100 University Avenue, Huntsville, TX 77320.

Washington County, Texas, and Incorporated Areas
Docket No.: FEMA–B–1065

Hog Branch	Approximately 2,500 feet upstream of North Blue Bell Road.	+240	Unincorporated Areas of Washington County.
	Approximately 1,000 feet upstream of North Blue Bell Road.	+249	
Little Sandy Creek	Approximately 300 feet upstream of Old Independence Road.	+240	Unincorporated Areas of Washington County.
	Approximately 200 feet downstream of Burleson Street	+278	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

Unincorporated Areas of Washington County

Maps are available for inspection at the Washington County Courthouse, 100 East Main Street, Brenham, TX 77833.

Lincoln County, Wisconsin, and Incorporated Areas
Docket No.: FEMA–B–1115

Copper River	Approximately 0.8 mile upstream of the confluence with the Wisconsin River.	+1279	Unincorporated Areas of Lincoln County.
	At County Highway E	+1316	
Prairie River	Approximately 0.3 mile downstream of Town Hall Road	+1436	Unincorporated Areas of Lincoln County.
	At State Highway 17	+1476	
Wisconsin River	Approximately 0.4 mile upstream of the confluence with the Pine River.	+1228	City of Merrill, Unincorporated Areas of Lincoln County.
	Approximately 990 feet downstream of South Center Avenue.	+1244	
	Approximately 2.5 miles downstream of Grandfather Dam	+1293	
	At the downstream side of Grandfather Dam	+1368	
	Approximately 0.7 mile upstream of County Highway E	+1401	
	At the downstream side of Grandmother Dam	+1406	
	Approximately 0.9 mile upstream of the confluence with Little Pine Creek.	+1422	
	Approximately 0.4 mile downstream of Tomahawk Dam	+1429	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.

ADDRESSES

City of Merrill

Maps are available for inspection at 1004 East 1st Street, Merrill, WI 54452.

Unincorporated Areas of Lincoln County

Maps are available for inspection at 804 North Sales Street, Merrill, WI 54452.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18627 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 07–163; RM–11385; RM–11416; DA 11–1129]

Radio Broadcasting Services; Markham, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The Audio Division has denied the petition for reconsideration of Victoria Radio Works, LLC (''VRW''), seeking reconsideration of the Audio Division's *Report and Order.* The *Report and Order* allotted Channel 283A at Markham, Texas, upgraded Station KHTZ(FM), Ganado, Texas, to Channel 235C, and substituted Channel 284C3 for Channel 236C3, at Victoria, Texas. In this *Memorandum Opinion and Order,* the Audio Division denied VRW's petition for reconsideration, which requested that Station KHTZ(FM) be ordered to operate on Channel 235C2 on an interim basis.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order,* MB Docket No. 07–163, adopted June 27, 2011, and released June 28, 2011. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 2011–18638 Filed 7–21–11; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126521–0640–02]

RIN 0648–XA589

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access fishery. This action is necessary to prevent exceeding the 2011 allocation of Pacific ocean perch in this area allocated to vessels participating in the BSAI trawl limited access fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The allocation of Pacific ocean perch, in the Western Aleutian District, allocated as a directed fishing allowance to vessels participating in the BSAI trawl limited access fishery was established as 149 metric tons (mt) by the final 2011 and 2012 harvest specifications for groundfish in the BSAI (76 FR 11139, March 1, 2011).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District by vessels participating in the BSAI trawl limited access fishery.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA) finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the Pacific ocean perch fishery in the Western Aleutian District for vessels participating in the BSAI trawl limited access fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 18, 2011. The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

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

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

Dated: July 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18571 Filed 7–19–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA588

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pelagic shelf rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of pelagic shelf rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2011 TAC of pelagic shelf rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 359 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011), and as posted as the 2011 Rockfish Program Allocations at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2011 TAC of pelagic shelf rockfish allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 319 mt, and is setting aside the remaining 40 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pelagic shelf rockfish by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of pelagic shelf rockfish for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 18, 2011.

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

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

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

Dated: July 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18572 Filed 7–19–11; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 101126522–0640–02]

RIN 0648–XA587

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch for Catcher/Processors Participating in the Rockfish Limited Access Fishery in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2011 total allowable catch (TAC) of Pacific ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), July 19, 2011, through 2400 hrs, A.l.t., December 31, 2011.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7269.

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

The 2011 TAC of Pacific ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central GOA is 458 metric tons (mt) as established by the final 2011 and 2012 harvest specifications for groundfish of the GOA (76 FR 11111, March 1, 2011), and as posted as the 2011 Rockfish Program Allocations at *http://alaskafisheries.noaa.gov/sustainablefisheries/goarat/default.htm.*

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2011 TAC of Pacific

ocean perch allocated to catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 408 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch by catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA.

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

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific ocean perch for catcher/processors participating in the rockfish limited access fishery in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of July 18, 2011.

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

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

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

Dated: July 19, 2011.

Emily H. Menashes,

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

[FR Doc. 2011–18574 Filed 7–19–11; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 141
Friday, July 22, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000 and 1033

[Doc. No. AMS–DA–08–0049; AO–166–A77; DA–08–06]

Milk in the Mideast Marketing Area; Order To Terminate Proceeding on Proposed Amendments to Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a rulemaking proceeding that proposed to amend Class I prices for certain counties of the Mideast milk marketing area. Marketing conditions since the close of the hearing on the proposal have changed substantially, no longer warranting a change.

DATES: The rulemaking proceeding is terminated as of July 23, 2011.

FOR FURTHER INFORMATION CONTACT: Erin C. Taylor, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–7311, *e-mail address: erin.taylor@usda.gov mailto: gino.tosi@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This action terminates the rulemaking proceeding concerning Class I prices for the Mideast order. The proposal was considered at a public hearing held August 19–20, 2008. The Secretary issued a recommended decision on the proposed amendment on January 8, 2009, and it was published on January 14, 2009 (74 FR 1976).

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that the termination of this proceeding will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by a dairy farm operation, it should be an inclusive standard for most small dairy farms. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During August 2008, the time of the hearing, there were 7,376 dairy farms pooled on the Mideast order. Of these, approximately 6,927 dairy farms (or 93.9 percent) were considered small businesses.

During August 2008, there were 53 handler operations associated with the Mideast order (27 fully regulated handlers, 9 partially regulated handlers, 2 producer-handlers and 15 exempt handlers). Of these, approximately 43 handlers (or 81 percent) were considered small businesses.

Minimum Class I prices are determined in all Federal milk marketing orders by adding a location specific differential, referred to as a ''Class I differential,'' to the higher of an advance Class III and Class IV price announced by USDA. The proposed amendments sought to increase the Class I prices in the southern tier of counties of the Mideast marketing area. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities.

Because this action terminates the rulemaking proceeding without amending the Class I prices of the Mideast marketing order, the economic conditions of small entities remain unchanged. This action does not change reporting, record keeping, or other compliance requirements.

Prior documents in this proceeding:

Notice of Hearing: Issued July 21, 2008; published July 24, 2008 (73 FR 43160).

Recommended Decision: Issued January 8, 2009; published January 14, 2009 (74 FR 1976).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreements and orders regulating the handling of milk in the Mideast marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), Cincinnati, Ohio, on August 19–20, 2008, pursuant to a notice of hearing issued July 21, 2008, and published in the **Federal Register** on July 24, 2008 (73 FR 43160).

Class I Prices

This action terminates the rulemaking concerning proposed amendments to the Class I prices of the Mideast marketing order. A proposal published in the hearing notice as Proposal 1 sought to increase the Class I prices up to $0.20 per hundredweight in 110 counties in the southern portion of the marketing area. USDA issued a recommended decision on January 8, 2009, recommending the adoption of Proposal 1, modified to recommend a $0.20 increase in the Class I price at Charleston, West Virginia.

The recommended decision was based on three primary factors: (1) The southern tier of counties in the Mideast marketing area is a deficit region that must rely on more distant milk to service its fluid distributing plants; (2) higher Class I prices brought about by providing higher Class I price adjustments in the Southeast, Appalachian and Florida marketing orders (southeastern orders) have resulted in more milk servicing those orders from farms located in the Mideast marketing area; and (3) transportation

costs had increased such that the Class I differentials did not offer sufficient pricing incentives to cover the cost of transporting milk from reserve northern surplus regions to the deficit southern region of the marketing area.

As noted in almost all the exceptions to the recommended decision, marketing conditions since the close of the hearing have changed substantially no longer warranting a change in the Class I price surface of the Mideast marketing area. Exceptions filed on behalf of the proponents of Proposal 1 (Michigan Milk Producers Association, Inc., Foremost Farms USA Cooperative, Inc., National Farmers Organization Inc., and Dairy Farmers of America, Inc.) requested that USDA take no action.

Termination of Proceeding

In view of the foregoing, it is hereby determined that this proceeding with respect to proposed amendment to the Mideast order regarding Class I prices should be and is hereby terminated.

List of Subjects in 7 CFR Parts 1000 and 1033

Milk marketing orders.

The authority citation for 7 CFR Parts 1000 and 1033 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

Dated: July 14, 2011.

David R. Shipman,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 2011–18393 Filed 7–21–11; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2011–0164]

Criminal Penalties for Unauthorized Introduction of Weapons and Sabotage

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment; notice of public Webinar.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is seeking input from the public, licensees, certificate holders, Agreement States, non-Agreement States, and other stakeholders on whether to conduct further rulemaking to implement the criminal penalty provisions found under Sections 229 and 236 of the *Atomic Energy Act of 1954,* as amended (AEA). To aid in that process, the NRC is requesting comments on the issues discussed in this document. While the NRC has not initiated a rulemaking on this subject, it is using the conventionally established rulemaking comment channels. Additionally, the NRC will hold a public Webinar to discuss these issues.

DATES: Submit comments on the issues discussed in this document by October 20, 2011. Comments received after the above date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0164 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–2011–0164. 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 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 notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0164.

FOR FURTHER INFORMATION CONTACT: Mr. Fritz Sturz, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6678; e-mail: *Fritz.Sturz@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 229 of the AEA provides Federal criminal sanctions for the wrongful introduction of weapons or explosives into specified classes of facilities, installations or real property under the jurisdiction, administration, in the custody of, or subject to the licensing authority or certification by the Commission. Similarly, Section 236 of the AEA provides Federal criminal sanctions for sabotage of specified classes of nuclear facilities or materials.

On August 8, 2005, President Bush signed into law the *Energy Policy Act of 2005* (EPAct), Public Law 109–58, 119 Stat. 594 (2005). Section 654 of the EPAct, ''Unauthorized Introduction of Dangerous Weapons'' (119 Stat. 812), amended Section 229 of the AEA, ''Trespass on Commission Installations'' (42 U.S.C. 2278a), to broaden the list of facilities covered by Section 229. Similarly, Section 655 of the EPAct, ''Sabotage of Nuclear Facilities, Fuel, or Designated Material'' (119 Stat. 594), amended Section 236 of the AEA, ''Sabotage of Nuclear Facilities or Fuel'' (42 U.S.C. 2284), to broaden the list of facilities that are covered by Section 236. Additionally, Section 655 of the EPAct added a provision in Section 236(a) authorizing the NRC to identify certain radioactive material or other property for inclusion within the scope of the criminal penalties in Section 236, if the Commission determines by rulemaking or order that such material

or other property is of significance to public health and safety or the common defense and security.

Section 229 of the AEA now authorizes the NRC to issue regulations ''relating to the entry upon or carrying, transporting, or otherwise introducing or causing to be introduced any dangerous weapon, explosive, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property, into or upon any facility, installation, or real property subject to the jurisdiction, administration, in the custody of the Commission, or subject to the licensing authority of the Commission or certification by the Commission under this Act or any other Act.''

Section 236 of the AEA makes it a Federal crime to knowingly destroy or cause physical damage, or to attempt or to conspire to commit such acts, to any of the following: (1) Production facilities or utilization facilities licensed under the AEA; (2) nuclear waste treatment, storage, or disposal facilities licensed under the AEA; (3) nuclear fuel (destined) for such utilization facilities or spent nuclear fuel from such utilization facilities; (4) uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities licensed or certified by the NRC; (5) production, utilization, waste storage, waste treatment, waste disposal, uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities subject to licensing or certification under the AEA during the construction of the facility, if the destruction or damage caused or attempted to be caused could adversely affect public health and safety during the operation of the facility; or (6) primary facilities or backup facilities from which a radiological emergency preparedness alert and warning system is activated.

II. Discussion

A. Comments on Proposed Rule

On September 3, 2008, the NRC published a proposed rule in the **Federal Register** (73 FR 51378) containing draft regulations implementing the NRC's authority to impose Federal criminal penalties on individuals who, without authorization, introduce weapons or explosives into specified classes of facilities and installations subject to the regulatory authority of the NRC. In addition to the proposed regulations, the notice identified several specific issues for which the NRC sought comments. These issues included whether the rule's scope should be extended beyond the facilities listed in the proposed rule to cover hospitals and other classes of facilities licensed to possess nationally tracked sources that are included in the NRC's National Source Tracking System (*i.e.,* licensees possessing certain quantities of radioactive material).

Seventeen comments were received on the proposed rule. Some commenters addressed the issue of whether a final rule should cover additional facilities. Some of these comments favored extending coverage to hospitals and other facilities possessing nuclear or radioactive material. The reasons given included: (1) Anyone who introduces a dangerous weapon, explosive, or other dangerous material into such a facility most likely intends to do harm; (2) anyone bringing such an item into a hospital or other facility that ''stores nuclear or radioactive material'' should expect to be penalized for doing so; (3) warning signs will ensure that the rule is not violated by accident, although anyone who intends to cause harm in a covered facility would likely not be deterred by the rule anyway; and (4) those seeking to access nuclear or radioactive materials in such facilities for illicit purposes would likely be able to locate those materials even if there are no warning signs posted pursuant to this rule. A major medical institution commented on the proposed rule and recommended against extending the sign-posting requirement to medical facilities. This commenter reasoned as follows: (1) Warning signs would attract attention to the location of radioactive material sources covered by the NRC's National Source Tracking System, thereby potentially rendering them less secure, given that many licensees currently try to avoid drawing attention to the locations of such materials; (2) the strong language in the posting could be frightening to patients in hospitals, who may already be in a vulnerable state caused by their medical situations; and (3) persons with unescorted access to facility areas of concern can simply be trained both to understand the rule themselves and to warn persons they escort about the rule's existence.

This commenter also noted that if the NRC expands the National Source Tracking System in the future to include Category 3 and 1/10th of Category 3 byproduct material sources [1], then a corresponding expansion of byproduct material sources under Title 10 of the Code of Federal Regulations (10 CFR), § 73.75, would encompass many additional hospitals and other facilities.

On September 22, 2009, the Commission, in its Staff Requirements Memorandum on SECY–09–0087 (ADAMS Accession No. ML092650473), directed the staff to ''conduct an assessment to determine whether including any such facilities [under the new authority of Section 229 or Section 236, or both, of the AEA] is warranted considering existing Federal, State, and local laws regarding the introduction of firearms and other weapons into these types of facilities, as well as other relevant facility specific considerations.'' The Commission further directed that ''[t]he staff should engage with appropriate stakeholders, including the Organization of Agreement States [OAS]''; ''[i]f the staff concludes, based on its assessment, that additional rulemaking is warranted, it should submit a rulemaking plan for the Commission's approval explaining the need for the rule and describing the views of stakeholders.''

The NRC has concluded it would be appropriate to consider whether the agency should specify certain byproduct material, high-level radioactive waste, and source material as being of such significance to public health and safety or the common defense and security as to warrant criminal sanctions under the AEA for the introduction of dangerous weapons into, or damage or attempted damage to, facilities holding these materials.

Accordingly, the NRC is seeking input from the public, licensees, certificate holders, Agreement States, non-Agreement States, and other stakeholders on whether to conduct a rulemaking to develop regulations implementing the criminal penalty provisions of Section 229 or Section 236, or both, of the AEA regarding unauthorized introduction of weapons or explosives into specified classes of NRC- and Agreement State-regulated facilities and the sabotage or attempted sabotage of specified classes of radioactive materials and other property, respectively.

B. Significant Issues

Section 229 of the AEA establishes Federal criminal penalties for individuals who trespass upon or introduce dangerous instruments or material likely to cause harm or damage to NRC-regulated facilities or otherwise under the jurisdiction of the Commission. Section 236 of the AEA establishes Federal criminal penalties for individuals who knowingly commit, attempt or conspire to destroy or cause damage to certain nuclear facilities or

[1] Category 3 equals one-tenth (1/10th) of the Category 2 values listed in 10 CFR Part 73, Appendix I, International Atomic Energy Agency (IAEA) Code of Conduct, *http://www.iaea.org/newscenter/features/researchreactors/conduct.html/adams.html.*

materials. Criminal penalties are designed, in part to serve as a deterrent to such acts. In considering the question of an effective deterrent, the NRC notes that the punishment for a conviction for a violation of Section 229 can range from a fine not to exceed $1,000 up to a fine not to exceed $5,000, or imprisonment for not more than 1 year, or both, depending on the circumstances of the offense. By contrast, the punishment for a conviction for a violation of Section 236 can be a fine of not more than $10,000 or imprisonment for not more than 20 years, or both, and, if death results to any person, imprisonment shall be for any term of years or for life, depending on the circumstances of the offense. Notwithstanding any changes to Sections 229 and 236 of the AEA, the States would retain their full authority to impose appropriate sanctions for violations of state laws.

States typically have a large range of existing statutes to prosecute individuals who introduce or cause to be introduced dangerous weapons, explosives, or other dangerous material into, or use such items in the commission of a crime against, an NRC- or Agreement State-regulated facility (*e.g.,* murder, attempted murder, assault, assault with a deadly weapon). However, the variability of State law and consistency of State prosecution are factors that may limit the effectiveness and consistency of these penalties as a deterrent strategy. Relying on Federal statutes for prosecution might create a more consistent deterrent strategy. Consequently, the NRC is seeking stakeholder views on whether the NRC should promulgate regulations implementing the NRC's expanded authority set forth in Sections 229 and 236 of the AEA.

C. Agreement State Compatibility[2]

In seeking stakeholder input on whether to include other facilities containing nuclear and radioactive material, the NRC is also using this notice to obtain input from stakeholders regarding the bases for the rulemaking and associated Agreement State compatibility. The designation of the authority being used for regulations does have significance in determining whether the Agreement States or the NRC would be responsible for overseeing the implementation of these requirements for Agreement State licensees. The NRC relinquishes its regulatory authority to Agreement States for certain materials, under Section 274 m. of the AEA. However, if a rulemaking were to be issued solely under the NRC's authority to protect the common defense and security, only the NRC would have the authority to impose these requirements on Agreement State licensees, and the NRC would be responsible for the inspection and enforcement of these requirements for Agreement State licensees. When a rulemaking applies to both the NRC's public health and safety and common defense and security missions, the operative question is whether NRC oversight is necessary to fulfill the common defense and security aspects of the regulations. The NRC believes that a rulemaking implementing the provisions of Section 229 could have a ''public health and safety'' basis or a ''common defense and security'' basis.

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), a rulemaking under the NRC's public health and safety authority would be a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and the NRC requirements. The NRC program elements (including regulations) are placed into four compatibility categories. In addition, the NRC program elements can be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A includes those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B includes those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C includes those program elements that do not meet the criteria of Category A or B but nonetheless an Agreement State should adopt the essential objectives of the Category C program elements to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. Compatibility Category D includes those program elements that do not meet any of the criteria of Category A, B, or C, above, and thus do not need to be adopted by Agreement States for purposes of compatibility. The health and safety category includes program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.,* adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in Category D based on those NRC elements that embody the essential objectives of the NRC program because of particular health and safety considerations.

Both the NRC and Agreement States regulate byproduct material under Section 274 of the AEA. Therefore, several regulatory and process issues could arise in a rulemaking to add byproduct material licensees to the classes of facilities covered under Section 229 of the AEA. Under the NRC's current regulations, classes of licensees specified in 10 CFR 73.75(a) are required to post warning signs on the exterior of their protected area or the exterior of buildings located outside a protected area that contain certain radioactive material. These signs are intended to warn individuals that ''the willful unauthorized introduction of any dangerous weapons, explosives, or other dangerous instrument or material likely to produce substantial injury or damage to persons or property'' is a Federal crime. Were the NRC to establish regulations implementing Section 229 under its authority to protect the public health and safety, the required action for compatibility by Agreement States only involves establishing requirements for applicable Agreement State licensees to post warning signs. Agreement States would not have to establish criminal penalties equivalent to Section 229 of the AEA. Furthermore, an NRC rulemaking would not limit States from establishing their own penalties under State law. Agreement States would retain their full authority to impose appropriate sanctions for violations of state laws. However, the Agreement States would perform inspections verifying that any affected licensees under their jurisdiction had installed the warning signs at their facilities. Likewise, the NRC would perform inspections to verify warning signs at NRC licensed facilities.

In the case of implementing regulations under the NRC's authority to protect the common defense and

[2] Refer to Handbook 5.9 Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' *(http://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-5.html).*

security, the compatibility category would be designated as ''NRC.'' Compatibility Category ''NRC'' includes those program elements that address areas of regulation that cannot be relinquished to Agreement States pursuant to the AEA or the provisions of 10 CFR. The Agreement States do not adopt these program elements. In this situation, the NRC's rulemaking establishes regulations that would apply to both affected NRC licensees and Agreement State licensees, and the NRC would be responsible for enforcing the requirements.

The NRC has not previously chosen to issue regulations to implement the authority of Section 236 of the AEA. Instead, the NRC has viewed the language of this statute as-plain enough to enable the Department of Justice (DOJ) to initiate prosecutions for criminal acts, as the DOJ deemed appropriate. A rulemaking would allow the NRC to identify certain radioactive material or other property for inclusion within the scope of Section 236 if the Commission determines that such material or other property is of significance to the public health and safety or the common defense and security. The NRC could conduct a rulemaking to implement the provisions of Section 236 using a ''common defense and security'' basis without the need for Agreement State-compatible program elements.

D. Options for Radioactive Material, Nuclear Material, and Other Property

In deciding whether further rulemaking is warranted, additional types of radioactive material and other property are being considered.

• Materials in Appendix I, ''Category 1 and 2 Radioactive Materials,'' to 10 CFR Part 73, ''Physical Protection of Plants and Materials,'' which would be considered under the authority of both Sections 229 and 236, including multiple radionuclides, in accordance with the Appendix I aggregation formula[3].

The consideration of Category 1 and 2 radioactive materials listed in Appendix I to 10 CFR Part 73 as significant to public health and safety or to the common defense and security is based on ''The 2010 Radiation Source Protection and Security Task Force Report,'' dated August 11, 2010, (*http://www.nrc.gov/security/byproduct/2010-task-force-report.pdf,* ADAMS Accession No. ML102230141). The interagency task force assessed the quantities of radioactive material sufficient to create a significant radiological dispersal device (RDD) and a significant radiation exposure device (RED), with consideration of social, economic, and psychological consequences. These risk-significant radioactive materials are the same as specified in the 2004 International Atomic Energy Agency's Code of Conduct on the Safety and Security of Radioactive Sources and as listed in Appendix I to 10 CFR part 73.

• Production-reactor spent nuclear fuel (SNF) and naval-reactor SNF.

Production-reactor SNF and naval-reactor SNF also present the potential for significant health hazards and would be considered under the authority of Section 236. While production facilities are included in 10 CFR 73.75 under the authority of Section 229, they are not specifically included in Sections 236.a.(1) through 236.a.(6). Since these SNFs could be stored alongside SNF from utilization facilities at an NRC-licensed facility, the same Federal criminal sanctions for malevolent acts are appropriate and warranted. Including these SNFs as radioactive material under the authority of Section 236.a.(7) would also provide the same Federal criminal sanctions for malevolent acts during transport to and from NRC-licensed facilities.

• Source material (either unenriched or depleted uranium) in the physical form of uranium hexafluoride (UF_6).

The UF_6 presents the potential for significant health hazards and would be considered under the authority of Section 236. The UF_6 at uranium enrichment, uranium conversion, or nuclear fuel fabrication facilities is included in 10 CFR 73.75 under the authority of Section 229. However, including UF_6 as radioactive material under the authority of Section 236.a.(7) would also provide the same Federal criminal sanctions for malevolent acts during transport.

• Uranium enrichment technology classified as Confidential—Restricted Data or Secret—Restricted Data.

The classified material (*i.e.,* components), apart from the SNM, are of significance to the common defense and security. Uranium enrichment facilities are included in 10 CFR 73.75 under the authority of Section 229. However, including classified uranium enrichment technologies as property under the authority of Section 236.a.(7) would provide the same Federal criminal sanctions for malevolent acts during transport.

E. Options for Rulemaking

The NRC is seeking stakeholder input on four options, including a no-action alternative:

(1) Take no action (do not conduct further rulemaking on these statutes).

(2) Conduct further rulemaking to implement the authority of only Section 229 of the AEA. Under this option, the NRC would incur the cost of the rulemaking; affected licensees would incur the cost of the procurement, installment, and maintenance of the warning signs; and affected licensees would incur the cost of the inspection of their installation of the warning signs. If a rulemaking is conducted under the NRC's public health and safety authority, then Agreement States would also need to adopt compatible program elements for the notice posting requirement only (*e.g.,* rulemaking, licensing and inspection etc).

(3) Conduct further rulemaking to implement the authority of only Section 236 of the AEA. This option would resolve the current inability to impose Federal criminal sanctions for malevolent acts against SNF from production reactors or naval reactors located at an NRC-regulated facility and would allow for the inclusion of additional classes of radioactive material, nuclear material, and other property designated by the Commission (including radioactive or nuclear material being transported on public roads, railways, or waterways). While this option would not include the specific criminal acts of introducing any dangerous weapon, explosive, or other dangerous instrument or material specified in Section 229, it can be argued that the introduction of such dangerous weapons, explosives, or other dangerous instruments or materials (without actually using them) is an attempted act of sabotage under Section 236. Also, this option does not limit the criminal act to a specific facility. Rather, it includes destruction of radioactive material or other property wherever it is located (*i.e.,* in transport). A rulemaking, accomplished under the NRC's authority to protect the common defense and security, would not require Agreement State or licensee actions (compatible program elements and warning signs).

(4) Conduct further rulemaking to implement the authority of both Sections 229 and 236 of the AEA. This option is essentially the same as Options 2 and 3. However, under Option 4, the NRC could conduct a rulemaking to implement Section 229 under its authority to protect ''public health and safety'' and to implement

[3] These materials are also provided in other formats in Appendix E to 10 CFR Part 20 and Appendix P to 10 CFR part 110.

Section 236 under its authority to protect ''the common defense and security.''

The Staff believes that Option 1 does not accomplish the objectives of increasing the deterrence of malevolent acts against NRC- and Agreement State-regulated facilities, radioactive material, nuclear material, or property. Option 2 is limited in scope to facilities or installations with risk-significant radioactive material and would not provide the desired deterrent value of consistent Federal criminal sanctions for certain other nuclear material or property, particularly during transport. Because Section 236 offers greater flexibility and greater capability for punishment than Section 229, Option 3 would likely have a greater deterrent value than Option 2. Option 3 would be simpler for licensees, the NRC, and Agreement States. Option 4 accomplishes the greatest increase in deterrence.

III. Specific Questions

To assist the NRC in evaluating whether additional rulemaking should be undertaken to implement the criminal penalty provisions of Sections 229 and 236 of the AEA, the NRC is seeking stakeholder input on the following specific questions:

Q1.1. Should the NRC conduct further rulemaking to implement the authority of Section 229 or Section 236 of the AEA, or both?

Q1.2. Should the NRC forgo further rulemaking and rely on State criminal statutes (for both Agreement States and non-Agreement States) to deter individuals with malevolent intentions? Why?

Q1.3. If the commenter's view is that the NRC should conduct a rulemaking, which option for rulemaking is best? Why? The available options (1 through 4) include no-action, rulemaking implementing the authority of Section 229 alone, Section 236 alone, or both Sections 229 and 236.

If a rulemaking is undertaken, the NRC is also seeking stakeholder input on the following questions:

Q2.1. Should the NRC include the range of radioactive materials specified in Appendix I to 10 CFR Part 73 in quantities equal to or exceeding the Category 2 threshold limits?

Q2.2. Alternatively, should the NRC use a different list of radionuclides, or different quantity limits? If so, what does the commenter suggest? Why?

Q3.1. Should the NRC include the waste materials recommended by the NRC staff, specifically SNF from production reactors and naval reactors? These new requirements would apply only to activities regulated by the NRC, not to facilities or activities regulated by the U.S. Department of Energy.

Q3.2. Should the NRC include source material in the form of UF_6? This would include both natural uranium and depleted uranium but not SNM, which is already covered as ''nuclear fuel'' under the current language of Section 236a.(3). Additionally, the NRC notes that uranium conversion and fuel fabrication facilities are already covered under the current language of Section 236a.(4). Thus, adding source material and depleted uranium in the form of UF_6 would allow for prosecution of malevolent acts against these materials while they are in transit.

Q3.3. Should the NRC include the other property recommended by its staff, specifically, classified enrichment technology components? Since the language of Section 236a.(4) currently includes uranium enrichment facilities, adding this classified material would allow for the prosecution of malevolent acts against classified enrichment technology while these components are in transit.

Q4.1. If the NRC conducts a rulemaking to implement the authority of Section 229 (Option 2), should it use a ''public health and safety'' basis or a ''common defense and security'' basis? Why? As noted above, the NRC is not recommending further rulemaking using the authority of Section 229; however, the agency is seeking stakeholder views on this issue.

Q4.2. If the NRC conducts a rulemaking to implement the authority of Section 236 (Option 3), should it use a ''public health and safety'' basis or a ''common defense and security'' basis? Why? As noted above, the NRC is recommending conducting a rulemaking to implement the authority of Section 236, using a ''common defense and security'' basis; however, the agency is seeking stakeholder views on this issue.

Q4.3. Should the NRC conduct a rulemaking implementing the combined authority of Sections 229 and 236 (Option 4), using either a ''public health and safety'' basis or a ''common defense and security'' basis? Why?

Q4.4. If the NRC conducts a rulemaking implementing the authority of Section 229, Section 236, or a combination of both, and uses a ''public health and safety'' basis, what is the appropriate Agreement State compatibility category for this rulemaking? Why?

IV. Public Webinar

To facilitate the understanding of the public and other stakeholders of these issues and the submission of informed comments, the NRC staff is planning to schedule a Webinar in August or September, 2011. Participants must register to participate in the Webinar. Registration closes 1 day before the Webinar. When the Webinar is scheduled, registration information may be found at the NRC's public Web site under the headings Public Meetings & Involvement > Public Meeting Schedule; see Web page *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

Dated this 8th day of July 2011.

For the Nuclear Regulatory Commission.

Michael C. Layton,

Acting Director, Division of Security Policy, Office of Nuclear Security and Incident Response.

[FR Doc. 2011–18608 Filed 7–21–11; 8:45 am]

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DEPARTMENT OF ENERGY

10 CFR Part 430

[Docket Number EERE–2011–BT–STD–0047]

RIN 1904–AC56

Energy Conservation Program: Energy Conservation Standards for Direct Heating Equipment

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

ACTION: Notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The Energy Policy and Conservation Act of 1975 (EPCA), as amended, prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including direct heating equipment. In this notice, the U.S. Department of Energy (DOE) proposes to amend its definitions pertaining to direct heating equipment. Specifically, DOE is proposing to change to the definition of ''vented hearth heater,'' a type of direct heating equipment, to clarify the scope of the current exclusion for those vented hearth heaters that are decorative hearth products. The proposed modification to the existing exclusion would shift the focus from the current maximum input capacity limitation (*i.e.,* 9,000 Btu/h) to a number of other factors, including the absence of a standing pilot light or other continuously burning ignition source. DOE has tentatively concluded that these amendments would result in increased energy savings overall, as well as for the types of units under the exclusion. The notice also announces a

public meeting to receive comment on these proposed amendments to the definition for ''vented hearth heater'' and associated analyses and results.

DATES: DOE will hold a public meeting on September 1, 2011 from 9 a.m. to 4 p.m., at DOE headquarters in Washington, DC. The meeting will also be broadcast as a webinar. See section VII, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

DOE will accept comments, data, and information regarding this notice of proposed rulemaking (NOPR) before and after the public meeting, but no later than September 20, 2011. See section V, ''Public Participation,'' for details.

ADDRESSES: The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E–089, 1000 Independence Avenue, SW., Washington, DC 20585. To attend, please notify Ms. Brenda Edwards at (202) 586–2945. Please note that foreign nationals visiting DOE Headquarters are subject to advance security screening procedures. Any foreign national wishing to participate in the meeting should advise DOE as soon as possible by contacting Ms. Edwards to initiate the necessary procedures. Please also note that those wishing to bring laptops into the Forrestal Building will be required to obtain a property pass. Visitors should avoid bringing laptops, or allow an extra 45 minutes. Persons can attend the public meeting via webinar. For more information, refer to the section V, ''Public Participation,'' near the end of this notice.

Any comments submitted must identify the NOPR on Energy Conservation Standards for Direct Heating Equipment, and provide docket number EERE–2011–BT–STD–0047 and/or regulatory information number (RIN) 1904–AC56. Comments may be submitted using any of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

2. *E-mail: DHE–2011–STD–0047@ee.doe.gov.* Include Docket Number EERE–2011–BT–STD–0047 and/or RIN 1904–AC56 in the subject line of the message.

3. *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. If possible, please submit all items on a compact disc (CD), in which case it is not necessary to include printed copies.

4. *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., Suite 600, Washington, DC 20024. Telephone: (202) 586–2945. If possible, please submit all items on a CD, in which case it is not necessary to include printed copies.

No telefacsimiles will be accepted. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of Energy Efficiency and Renewable Energy through the methods listed above and by e-mail to *Christine_J._Kymn@omb.eop.gov.*

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

Docket: The docket is available for review at *http://www.regulations.gov,* including **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials. All documents in the docket are listed in the *http://www.regulations.gov* index. However, not all documents listed in the index may be publicly available, such as information that is exempt from public disclosure.

A link to the docket Web page can be found at: *http://www.regulations.gov/#!docketDetail;dct=FR+PR+N+O+SR+PS;rpp=250;so=DESC;sb=postedDate;po=0;D=EERE–2011–BT–STD–0047.* This Web page contains a link to the docket for this notice on the *http://www.regulations.gov* site. The *http://www.regulations.gov* Web page contains simple instructions on how to access all documents, including public comments, in the docket. See section V, ''Public Participation,'' for further information on how to submit comments through *http://www.regulations.gov.*

For further information on how to submit a public comment, review other public comments and the docket, or participate in the public meeting, contact Ms. Brenda Edwards at (202) 586–2945 or by e-mail: *Brenda.Edwards@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–7892. E-mail: *Mohammed.Khan@ee.doe.gov.*

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC–71, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–9507. E-mail: *Eric.Stas@hq.doe.gov.*

For information on how to submit or review public comments, contact Ms. Brenda Edwards, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. E-mail: *Brenda.Edwards@ee.doe.gov.*

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I. Summary of the Proposed Rule

Title III, Part B [1] of the Energy Policy and Conservation Act of 1975 (EPCA or the Act), Public Law 94–163 (42 U.S.C.

[1] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, which includes the types of direct heating equipment that are the subject of this rulemaking. (42 U.S.C. 6292(a)(9)) Pursuant to EPCA, any new or amended energy conservation standard that DOE prescribes for certain products, such as direct heating equipment, must be designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. (42 U.S.C. 6295(o)(2)(A)). Furthermore, the new or amended standard must result in a significant conservation of energy. (42 U.S.C. 6295(o)(3)(B)). On April 16, 2010, DOE published a final rule (hereafter referred to as the April 2010 final rule) in accordance with these statutory provisions and other statutory requirements discussed in the final rule, which, in relevant part, promulgated definitions and energy conservation standards for vented gas hearth direct heating equipment. 75 FR 20112.

In establishing the definitions pertaining to direct heating equipment in the April 2010 final rule, DOE recognized the aesthetic appeal of certain gas hearth products and included a provision in its definition of ''vented hearth heater'' that considered certain gas hearth products to be decorative in nature, and excluded them from having to comply with DOE's minimum energy conservation standard otherwise applicable to vented gas hearth direct heating equipment. The April 2010 final rule did not address vented gas log sets, which DOE also considers decorative in nature. DOE clarified its position on vented gas log sets in a document published on DOE's Web site titled ''*Frequently Asked Questions: 'Vented Hearth Heater' Definition.*''[2] In this notice, DOE proposes to further amend its definitions pertaining to direct heating equipment. Specifically, DOE is proposing to amend its definition of ''vented hearth heater'' to modify the conditions contained in the existing definition for the subset of such products to be considered decorative in nature and, therefore, not subject to the DOE's minimum energy conservation standards for vented hearth heaters. In addition, DOE is proposing to include vented gas log sets in the definition of ''vented hearth heater,'' and to add a similar set of criteria for exclusion for vented gas log sets. DOE has tentatively concluded that vented gas log sets warrant similar treatment to vented hearth products, due to the similarities between the two types of products. Both provide heat and aesthetic appeal for consumers, and they have certain similar characteristics, such as the presence of a flame and ceramic logs. The definition of ''vented hearth heater'' in the April 2010 final rule stated that ''[t]hose heaters with a maximum input capacity less than or equal to 9,000 British thermal units per hour (Btu/h), as measured using DOE's test procedure for vented home heating equipment (10 CFR Part 430, subpart B, appendix O), are considered purely decorative and are excluded from DOE's regulations.'' 75 FR 20112, 20234 (April 16, 2010). In this notice, DOE proposes to amend the definition for ''vented hearth heater'' to base the exclusion for decorative vented hearth products and vented gas log sets on several criteria, including the American National Standards Institute (ANSI) standard to which the product is certified. The proposed amended definition reads as set forth in the amendment to 10 CFR 430.2 later in this proposed rule.

DOE believes the amended definition of ''vented hearth heater'' would provide benefits to both consumers and the gas hearth products industry in terms of energy savings and product choice, by allowing manufacturers to continue to offer decorative hearth products across a broad range of input ratings, rather than limiting decorative hearth products to input ratings below the current limitation of 9,000 Btu/h. By eliminating the use of standing pilot lights in all decorative vented gas hearth products and vented gas log sets beginning on July 1, 2014, DOE believes the amended definition would result in a significant increase in overall energy savings, including those types of units eligible for the decorative products exclusion. At the same time, this proposal would lessen the impacts and burden on manufacturers of vented hearth heaters, while promoting a variety of available models for consumers. For vented gas log sets, the proposal would keep their treatment consistent with decorative vented hearth products, and would result in substantial energy savings. DOE estimates that the elimination of standing pilot lights in decorative vented hearth heater products and vented gas log sets would result in an additional 0.12 quads of additional energy savings over the 30-year period from 2014 through 2043, beyond those savings already achieved by the April 2010 final rule. Manufacturers who choose not to avail themselves of the exclusion would be subject to the energy conservation standards for vented hearth heaters promulgated in the April 2010 final rule.

Therefore, DOE has tentatively concluded that the proposed amended definition of ''vented hearth heater'' would improve the existing definitions pertaining to direct heating equipment and further clarify the scope of the current exclusion from the energy conservation standards for those vented hearth heaters that are decorative hearth products. In addition, the proposal would result in significant additional energy savings, preserve consumer choice, and reduce the burden on industry. For these reasons, DOE has tentatively concluded that the proposed amendments to DOE's definition of ''vented hearth heater'' would provide substantial benefits that outweigh the burden of the new requirements for products to be considered decorative hearth products, and accordingly, DOE proposes to adopt them in this notice. DOE's rationale is presented in further detail immediately below.

II. History of the Energy Conservation Standards Rulemaking and Current Standards

Prior to being amended in 1987, EPCA included home heating equipment as covered products. The amendments to EPCA effected by the National Appliance Energy Conservation Act of 1987 (NAECA; Pub. L. 100–12) included replacing the term ''home heating equipment'' with ''direct heating equipment,'' establishing standards for the direct heating equipment, and requiring that DOE determine whether these standards should be amended. (42 U.S.C. 6295(e)(3)–(4)) Nowhere in the statute is the term ''direct heating equipment'' defined. DOE amended the statutorily-prescribed standards for direct heating equipment for the first time in a final rule published on April 16, 2010 (*i.e.,* the April 2010 final rule), which prescribed the current energy conservation standards for direct heating equipment manufactured on or after April 16, 2013. 75 FR 20112. Of particular relevance here, the April 2010 final rule created a definition for ''vented hearth heater,'' established product classes for gas hearth direct heating equipment (*i.e.,* vented hearth heaters), and amended the minimum standards for direct heating equipment, including gas hearth direct heating equipment. The April 2010 final rule defined ''vented hearth heater'' at 10 CFR 430.2.

In addition, the April 2010 final rule amended the definition of ''vented

[2] This document is available on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_faq.pdf.*

home heating equipment or vented heater'' to include vented hearth heaters, along with the other types of heaters (*i.e.,* vented wall furnace, vented floor furnace, and vented room heater) that were already defined as vented home heating equipment.

The amended standards established in the April 2010 final rule for gas hearth direct heating equipment are set forth in Table II.1.

TABLE II.1—FEDERAL ENERGY EFFICIENCY STANDARDS FOR GAS HEARTH DIRECT HEATING EQUIPMENT

Product class	Standard level (Compliance date: 4/16/2013)
Gas hearth up to 20,000 Btu/h	AFUE* = 61%
Gas hearth over 20,000 Btu/h and up to 27,000 Btu/h	AFUE = 66%
Gas hearth over 27,000 Btu/h and up to 46,000 Btu/h	AFUE = 67%
Gas hearth over 46,000 Btu/h	AFUE = 68%

* Annual Fuel Utilization Efficiency.

Following DOE's adoption of the April 2010 final rule, the Hearth, Patio & Barbecue Association (HPBA) sued DOE in the United States Court of Appeals for the District of Columbia Circuit to invalidate the rule as it pertained to vented gas hearth products. Statement of Issues to Be Raised, *Hearth, Patio, & Barbecue Association* v. *Department of Energy, et al.,* No. 10–1113 (DC Cir. filed June 1, 2010). Litigation is pending; however, if this rule is adopted as proposed, it may make it unnecessary for the Court to resolve some of the issues surrounding the April 2010 final rule.

III. Discussion

A. Scope of Coverage of Vented Hearth Products

1. Description of Vented Hearth Products

Vented hearth products include gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets that typically include aesthetic features (*e.g.,* yellow flame, large flame) and that provide space heating. A vented hearth product can be intended to be a used as only a heating appliance or as a heat source with an aesthetic appeal. Characteristic of this duality of purpose, units designed as a heating appliance and those units that also have a decorative nature often share very similar external appearances, unit construction, and input capacities, thereby making it difficult to differentiate between the two types of hearth products. DOE notes that the primary difference between the two types of vented hearth heaters is that decorative units provide ambiance and aesthetic utility associated with a solid fuel (*e.g.,* wood-burning) fireplace in addition to heat output to the living space, whereas heating hearth products tend to focus on providing heat to the living space. Products intended for use as a heater are often shipped with or designed to be easily retrofitted with additional accessories that decorative products do not have, such as thermostats to control the heat output. However, DOE research has shown that such accessories are typically optional and, thus, not definitive in distinguishing between heaters and decorative units. To be clear, all vented hearth products constitute direct heating equipment where a gas-consuming device is inserted into the residential living space, but DOE believes that today's proposal to modify the exclusion for decorative hearth products strikes an appropriate balance between energy savings and consumer choice for such units.

2. Definitions for ''Direct Heating Equipment''

As discussed in section II above, before the enactment of NAECA, EPCA included ''home heating equipment'' in DOE's appliance standards program. EPCA did not define ''home heating equipment,'' however. NAECA's amendments to EPCA replaced the term ''home heating equipment'' with ''direct heating equipment,'' and specified energy conservation standards for ''direct heating equipment,'' but once again, the statute did not define the term ''direct heating equipment.'' In the absence of an unambiguous statutory definition, DOE has discretion to establish a reasonable regulatory definition. With that said, Congress's use of such broad terminology signals that the definition is open to accommodate future technological changes in the marketplace in keeping with DOE's energy-saving mandate under EPCA.

Prior to the April 2010 final rule, DOE had previously defined ''home heating equipment'' and related terms in its regulations, which can be found at 10 CFR 430.2. In the April 2010 final rule, DOE added a new definition of ''direct heating equipment,'' defining the term in the same manner that it had previously defined home heating equipment. 75 FR 20112, 20128, 20234 (April 16, 2010). DOE defines both ''home heating equipment'' and ''direct heating equipment'' as meaning ''vented home heating equipment and unvented home heating equipment.'' In its definitions at 10 CFR 430.2, DOE goes on to define both ''vented home heating equipment'' and ''unvented home heating equipment.'' Prior to being amended in the April 2010 final rule, the definition of ''vented home heating equipment,'' relevant here, read as published in 10 CFR Parts 400–499, revised as of January 1, 2010.

a. Application to Vented Hearth Products

In the April 2010 final rule, DOE concluded that vented hearth products (*i.e.,* gas-fired products such as fireplaces, fireplace inserts, stoves, and log sets) meet its definition of ''vented home heating equipment,'' because their designs furnish warmed air to the living space of a residence. DOE also concluded, therefore, that they are covered products under EPCA and are properly classified as direct heating equipment. 75 FR 20112, 20128 (April 16, 2010). Accordingly, DOE adopted a new definition of ''vented hearth heater'' and amended its definition of ''vented home heating equipment or vented heater'' to explicitly include vented hearth heaters, reading as published at 10 CFR 430.2.

DOE notes that the terminology ''designed to furnish warmed air'' in the definition of ''vented home heating equipment'' is not limited to furnishing warmed air through mechanical means by expelling or discharging such air, but can also refer to furnishing heat which warms the living space air through any method of heat transfer. Because of the very nature of hearth products (*i.e.,* the presence of a flame), all hearth products create heat, and hearth products provide some amount of that heat to the surrounding living space, including radiant heat. As a result, DOE believes that all vented hearth products are designed to furnish warm air, regardless of whether they have a mechanical means for furnishing the air (such as a blower) or grills through which the warm air can be circulated via natural convection.

Based upon the above reasoning, DOE determined that decorative vented hearth products are a subset of vented hearth heaters. Further, DOE has concluded previously that all vented hearth heaters (including decorative vented hearth products) are included in the broader classification of direct heating equipment. However, because DOE recognizes the aesthetic aspects of vented hearth products that are decorative in nature, DOE adopted an exclusion for those products from the

energy conservation standards that were promulgated in the April 2010 final rule. DOE continues to support this conclusion today, but is proposing to change the scope of the exclusion in order to achieve greater energy savings, promote consumer product choice, and ease manufacturer burdens.

Given the lack of a statutory definition for ''direct heating equipment,'' DOE seeks comment regarding whether its interpretation that decorative vented hearth products are a type of direct heating equipment is reasonable. This is identified as Issue 1 in section V.E, ''Issues on Which DOE Seeks Comment.''

b. Application to Vented Gas Log Sets

In the April 2010 final rule, DOE did not specifically address vented gas log sets under the broader classification of direct heating equipment. However, given their decorative nature, DOE published a document on DOE's Web site titled ''*Frequently Asked Questions: 'Vented Hearth Heater' Definition.''* [3] In that document, DOE stated that because gas log sets are not constructed as part of an entire enclosure (*i.e.,* there is no surrounding box or viewing pane) or a sealed system, they do not provide the same heating function as gas fireplaces, gas fireplace inserts, and gas stoves, which are constructed as enclosed systems. Due to these differences, DOE stated that vented gas log sets are intended to be installed for decorative purposes, and as a result, are not vented hearth heaters.

Upon reconsidering the definitions of ''direct heating equipment,'' ''vented home heating equipment,'' and ''vented hearth heater'' for this notice, DOE has determined that vented gas log sets are heating appliances (albeit relatively inefficient ones) and would be included as covered products under DOE's definitions. This approach is consistent with DOE's treatment of vented hearth products that provide both heat and aesthetic appeal. As noted above, DOE has determined that the terminology ''designed to furnish warmed air'' in the definition of ''vented home heating equipment'' is not limited to furnishing warmed air through mechanical means by expelling or discharging such air, but instead, it can refer to furnishing heat which warms the living space air through any method of heat transfer. Nor is the phrase ''designed to furnish warmed air'' dependent on a manufacturer's principal intention in designing, manufacturing, or marketing such products. Because vented gas log sets will provide some amount of heat to the living space, DOE believes that all vented gas log sets are designed to furnish warm air and, thus, are a subset of vented hearth heaters. As with decorative vented gas hearth products, DOE recognizes that vented gas log sets are typically decorative in nature, and is proposing to exclude them from DOE's standards for vented hearth heaters if they meet the specific set of criteria outlined in section III.B and discussed in detail in section III.C.

Given the lack of a statutory definition for ''direct heating equipment,'' DOE seeks comment regarding whether its interpretation that vented gas log sets are a type of direct heating equipment is reasonable. This is identified as Issue 1 in section V.E, ''Issues on Which DOE Seeks Comment.''

B. Proposed Definition for ''Vented Hearth Heater''

The amended definition for ''vented hearth heater'' that DOE is proposing in today's document reads as as set forth in the amendment to 10 CFR 430.2 later in this proposed rule.

The amendments to the definition of ''vented hearth heater'' being proposed in this notice are related to the scope of the exclusion for the subset of such heaters that DOE has determined should not be subject to the current energy conservation standards otherwise applicable to vented hearth heaters. In the April 2010 final rule, DOE defined the exclusion for decorative vented hearth products as those with input ratings below 9,000 Btu/h. 75 FR 20112, 20129, 20234 (April 16, 2010). The changes to the definition that DOE is proposing in this notice are twofold and are discussed in the paragraphs that follow.

First, DOE is proposing to exclude vented gas log sets from being subject to the energy conservation standards for vented hearth heaters, provided that they meet the set of criteria outlined in the definition of ''vented hearth heater.'' These products were previously not considered to be subject to standards for direct heating equipment; however, as noted in section III.A.2.b, DOE now believes these products should be subject to standards, unless they qualify for an exclusion along the lines of that proposed for vented gas hearth products.

Second, DOE is also proposing a specific set of criteria (rather than the 9,000 Btu/h input rating limitation) for establishing that a subset of vented hearth products should be excluded from the energy conservation standards because such units are decorative in nature. DOE believes that the conditions outlined in the definition for classifying a vented hearth product as decorative will create a clear division between vented hearth products that will be subject to DOE's standards for gas hearth direct heating equipment and those vented hearth products that focus primarily on providing ambiance and aesthetic utility, which will not be subject to DOE's standards. DOE also expects that the proposed amendments to the definition would lessen the burden on manufacturers and allow DOE to achieve greater energy savings than under the previous definition, while still achieving the energy efficiency mandate of EPCA, primarily through elimination of standing pilot lights or other continuously-burning ignition sources. In fact, DOE's analysis suggests that amendments associated with the proposed definition would result in significant energy savings that will be greater than the savings under the definition adopted in the April 2010 final rule, both overall as well as for the types of units eligible for the exclusion. (See section III.D of this notice for details on the estimated energy savings.)

C. Description of Criteria for Classification as Decorative Vented Hearth Products

As noted above, DOE's proposed amendments to the definition of ''vented hearth heater'' provide an exclusion for products that are decorative in nature, provided that they meet the criteria outlined in the definition. The exclusion criteria for vented gas log sets and vented hearth products are essentially the same (with the only exception being the first criterion), and are discussed together in the paragraphs below.

The first criterion that a product must meet to be considered a decorative vented hearth product or vented gas log set is that it must be certified to a certain ANSI standard. Specifically, for vented hearth products, it must be certified to ANSI Standard Z21.50, *Vented Gas Fireplaces,* and not be certified to ANSI Standard Z21.88, *Vented Gas Fireplace Heaters.* For vented gas log sets, it must be certified to ANSI Standard Z21.60, *Decorative Gas Fireplaces for Installation in a Solid-Fuel Fireplace.* DOE recognizes that the hearth products industry has attempted to distinguish between heater and decorative products using the certification under one of these standards as the criterion for classification into one category or the other. Further, ANSI Standard Z21.88 contains provisions that allow the main

[3] This document is available on DOE's Web site at: *http://www1.eere.energy.gov/buildings/appliance_standards/residential/pdfs/htgp_finalrule_faq.pdf.*

burners to be thermostatically-controlled. Therefore, DOE believes this criterion would be helpful in differentiating between vented hearth heaters and vented hearth products that are decorative in nature. In addition, the criterion for gas log sets would ensure that any products that meet the conditions for exclusion from energy conservation standards are certified to ensure safety and proper operation as a gas log set.

The second criterion in the proposed definition is that the product must be sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat. Hearth products intended for heating sometimes use thermostats to automatically turn on and off based on the temperature of the surrounding space. Often, thermostats are optional equipment that may be installed in the field. DOE believes that there should be no reason for a product intended to be used primarily for decorative purposes would need to employ a thermostat. In addition, DOE believes a provision in the warranty that voids it if a thermostat is installed will discourage the misuse of vented hearth products that are intended to be decorative and also discourage evasion of energy conservation standards by those who purchase decorative products and seek to use them as heaters.

The third criterion is that the product must expressly and conspicuously be identified on its rating plate and in all manufacturer advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance.'' This requirement will provide additional clarification for consumers and installers and make it obvious that the product is intended for decorative purposes only.

In the final criterion, which is perhaps of the greatest significance, DOE is proposing that products manufactured on or after July 1, 2014 must not be equipped with a standing pilot light or other continuously-burning ignition source in order to qualify for exclusion from energy conservation standards for vented hearth heaters. According to DOE's market research, more than half of the decorative hearth product market and more than three-quarters of the vented gas log market would not be impacted, because the products already utilize alternatives to a standing pilot light, such as an intermittent pilot or electronic ignition. However, if DOE adopts the proposed definition of ''vented hearth heater'' in a final rule, DOE notes that some products on the market would need to be: (1) Redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition source; (2) redesigned by April 16, 2013 to meet the required standard level for gas hearth direct heating equipment established by the April 2010 final rule; or (3) removed from the market prior to July 1, 2014. DOE believes that given the prevalence of the technological alternatives to standing pilot lights and other continuously-burning ignition sources (*e.g.,* electronic ignition, intermittent pilot) and the experience of manufacturers in implementing these alternatives, a compliance date of July 1, 2014 allows a reasonable amount of time for manufacturers to redesign or remove from the market their products with standing pilots or shift production to product lines without a standing pilot or other continuously-burning ignition source. DOE is interested in receiving comment from interested parties on the proposed compliance date for vented gas hearth products and vented gas log sets, including specific rationales and accompanying data as to why a different timeline for eliminating standing pilots or other continuously-burning ignition sources from decorative vented gas hearth products or vented gas log sets may or may not be warranted. This is identified as Issue 2 in section V.E, ''Issues on Which DOE Seeks Comment.''

In addition, DOE seeks comments on all aspects of the proposed definition for ''vented hearth heater,'' in particular, the criteria for exclusion of vented hearth products and vented gas log sets that are decorative in nature. This is identified as Issue 3 in section V.E, ''Issues on Which DOE Seeks Comment.''

D. National Energy Savings

As noted above, DOE is proposing that to qualify for an exclusion from the current energy conservation standards for products that are decorative in nature, vented gas hearth products and vented gas log sets manufactured on or after July 1, 2014 must not be equipped with a standing pilot light or other continuously-burning ignition source. DOE analyzed the energy savings expected to result from exclusion of the standing pilot light or other continuously-burning ignition source in the amended ''vented hearth heater'' definition. Based on information about vented hearth product models available in the market,[4] DOE estimated that about 38 percent of the vented decorative hearth models on the market would need to be redesigned to eliminate the use of standing pilot lights or other continuously-burning ignition sources. DOE also estimated that 20 percent of vented gas logs would have standing pilot lights or other continuously-burning ignition sources, based on a 1997 GTI study.[5] The remaining portion of the market is assumed to already utilize ignition alternatives, such as an intermittent pilot or electronic ignition.

To estimate the energy savings associated with today's proposal, DOE assumed that all decorative hearth products and vented gas log models with standing pilot lights or other continuously-burning ignition sources would be replaced with an intermittent pilot ignition, and would have an average duration of the pilot operation of about 37.5 h/yr (the same as the main burner operating hours[6]). On average, continuous pilot energy use is about 350 Btu/h[7] for decorative vented hearth products[8] and 1,250 Btu/h for vented gas logs.[9] For both vented hearth products and vented gas log sets, DOE assumed that pilot lights operate year round (*i.e.,* 8,760 h/yr) for 75 percent of the installations and that for the remaining 25 percent, the consumer operates the pilot for about one-fourth of the year (*i.e.,* 2190 h/yr). Thus, the average annual energy savings amount to 2.67 million Btu per unit for

[4] U.S. Department of Energy-Office of Codes and Standards, Analytical Tools: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

[5] Menkedick, J., Hartford, P., Collins, S., Chumaker, S., Wells, D. Topic Report: Hearth Products Study (1995–1997). Gas Research Institute (GRI). September 1997. GRI–97/0298.

[6] Houck, James, ''Residential Decorative Gas Fireplace Usage Characteristics'' (Report prepared for HPBA) (2010).

[7] U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

[8] U.S. Department of Energy-Office of Codes and Standards, Technical Support Document: Energy Conservation Standards for Residential Water Heaters, Direct Heating Equipment, and Pool Heaters (April 27, 2010).

[9] This value was derived from data collected on the following manufacturer Web sites:

Pittsburgh Gas Grill and Heater Co. Frequently Asked Questions. (URL: *http://www.pittsburghgasgrill.com/faq.html*).

Hargrove Hearth Products. Frequently Asked Questions. (URL: *http://www.hargrovegaslogs.com/faq.htm*).

Leonard's Stone & Fireplace. Frequently Asked Questions. (URL: *http://www.leonardsstoneandfireplace.net/faq.html*).

Fireside Hearth & Home. Frequently Asked Questions. (URL: *http://www.firesidehearthandhome.com/faq.php*).

Heatilator. Common Questions. (URL: *http://www.heatilator.com/customerCare/searchFaq.asp?c=Gas*).

decorative vented hearth products and 9.53 million Btu per unit for vented gas logs. DOE assumed an average lifetime of 15 years for both decorative vented hearth and vented gas logs units and average annual shipments of 460,000 decorative vented hearth units and 103,000 vented gas logs units.

In the April 2010 final rule, DOE estimated the national energy savings over the analysis period (2013–2042) for the vented hearth heaters to be 0.19 quads. 75 FR 20112, 20185 (April 16, 2010). Based on current information, DOE has determined that approximately 70 percent of the vented hearth products considered in 2010 are decorative hearth products. If one assumes that manufacturers were to avail themselves of the exclusion proposed in this rulemaking for all such products, DOE's revised national energy savings (NES) estimates show that the savings for the vented hearth heaters under the April 2010 standards would be 0.06 quads, which does not include any energy savings from products considered decorative in nature. Using the above assumptions, DOE calculated the national energy savings over the analysis period to be 0.17 quads for decorative hearth products and 0.07 quads for vented gas log sets under the proposed revised definition of ''vented hearth heater'' in today's rule which would eliminate the standing pilot lights on those units. Accounting for the approximately 0.13 quad reduction in energy savings for 2010 final rule (from assuming that all decorative products avail themselves of the exclusion proposed in this rulemaking), DOE estimated that the net additional national energy savings compared to the 2010 final rule would be 0.12 quads (rounded to two significant figures).

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Section 1(b)(1) of Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735 (Oct. 4, 1993), requires each agency to identify the problem that it intends to address, including, where applicable, the failures of private markets or public institutions that warrant new agency action, as well as to assess the significance of that problem. The problems that the standards in this rule address are as follows:

(1) There is a lack of consumer information and/or information processing capability about energy efficiency opportunities in the home appliance market.

(2) There is asymmetric information (one party to a transaction has more and better information than the other) and/or high transactions costs (costs of gathering information and affecting exchanges of goods and services).

(3) There are external benefits resulting from improved energy efficiency of direct heating equipment that are not captured by the users of such equipment. These benefits include externalities related to environmental protection and energy security that are not reflected in energy prices, such as reduced emissions of greenhouse gases.

In addition, DOE has determined that today's regulatory action is not an ''economically significant regulatory action'' under section 3(f)(1) of Executive Order 12866. Accordingly, DOE has not prepared a regulatory impact analysis (RIA) on today's rule, and the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) is not required to review this rule.

DOE has also reviewed this regulation pursuant to Executive Order 13563, issued on January 18, 2011 (76 FR 3281 (Jan. 21, 2011)). Executive Order 13563 is supplemental to and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, agencies are required by Executive Order 13563 to: (1) Propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public.

DOE emphasizes as well that Executive Order 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, DOE believes that today's NOPR is consistent with these principles, including the requirement that, to the extent permitted by law, agencies adopt a regulation only upon a reasoned determination that its benefits justify its costs and, in choosing among alternative regulatory approaches, those approaches maximize net benefits.

B. Review Under the Regulatory Flexibility Act

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

DOE reviewed the impacts of the proposed amendments in today's NOPR under the provisions of the Regulatory Flexibility Act and the procedures and policies discussed above. As a result of this review, DOE has prepared an IRFA for vented hearth products, a copy of which DOE will transmit to the Chief Counsel for Advocacy of the SBA for review under 5 U.S.C. 605(b). As presented and discussed below, the IFRA describes potential impacts on small manufacturers of vented hearth products associated with the required capital and product conversion costs from the proposed amended definition for ''vented hearth heater,'' which would change the scope of the exclusion from the applicable energy conservation standard.

1. Statement of the Need for, and Objectives of, the Rule

The reasons why DOE is proposing to amend the definition of ''vented hearth heater'' in today's NOPR and the

objectives of this and other related amendments are provided elsewhere in the preamble and not repeated here.

2. Description and Estimated Number of Small Entities Regulated

For manufacturers of direct heating equipment, the Small Business Administration (SBA) has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. 65 FR 30836, 30848 (May 15, 2000), as amended at 65 FR 53533, 53544 (Sept. 5, 2000) and codified at 13 CFR Part 121. The size standards are listed by North American Industry Classification System (NAICS) code and industry description, which are available at: *http://www.sba.gov/sites/default/files/Size_Standards_Table.pdf.* Direct heating equipment manufacturing is classified under NAICS 333414, ''Heating Equipment (except Warm Air Furnaces) Manufacturing.'' The SBA sets a threshold of 500 employees or less for an entity to be considered as a small business for this category.

In preparation for the April 2010 final rule, DOE conducted a market survey using all available public information to identify potential small manufacturers of the type of products that are the subject of this rulemaking. DOE's research included the HPBA membership directory, Air-Conditioning, Heating, and Refrigeration Institute (AHRI) product databases, and individual company Web sites to find potential small business manufacturers. DOE also asked stakeholders and industry representatives if they were aware of any other small manufacturers during manufacturer interviews and at previous DOE public meetings. DOE reviewed all publicly-available data and contacted various companies, as necessary, to determine whether they met the SBA's definition of a small business manufacturer of covered residential direct heating equipment. DOE screened out companies that did not offer products covered by this rulemaking, did not meet the definition of a ''small business,'' or are foreign owned and operated. In the April 2010 final rule, DOE identified 10 small manufacturers of vented gas hearth products, and DOE believes that the vented hearth heater market has not changed significantly since the time of the April 2010 final rule. Before issuing the NOPR that lead to the April 2010 final rule, DOE attempted to contact the small business manufacturers of vented hearth products. One of the small businesses consented to being interviewed during the MIA interviews, and DOE received feedback from an additional two small businesses through survey responses. DOE also obtained information about small business impacts while interviewing manufacturers that exceed the small business size threshold of 500 employees in this industry. The remaining small businesses that DOE identified in the rule did not respond to requests for additional information or interviews.

For this rulemaking, DOE also identified seven small business manufacturers of vented gas log sets. Of these manufacturers, three are also small business manufacturers of decorative hearth products and, consequently, were previously identified. The only covered products made by the remaining four small business manufacturers are vented gas log sets. DOE attempted to contact the four small business manufacturers of gas log sets that it identified. Additionally, DOE believes that given the similarities in these types of products, the compliance costs of small business manufacturers of vented gas log sets resulting from this rulemaking can be reasonably assumed to be largely the same as the compliance costs of small business manufacturers of vented gas hearth products.

3. Description and Estimate of Compliance Requirements

For the April 2010 final rule, DOE calculated the anticipated capital and product development costs for vented hearth heaters by estimating per-line cost and average number of product lines for a typical small business manufacturer. DOE used certification databases, product catalogs, interviews with manufacturers, and sources of public information to estimate the impacts of the rule on small business manufacturers. In the final rule, DOE concluded that because a typical manufacturer of vented hearth products already offers multiple product lines that meet and exceed the required efficiencies and because most product lines that did not meet the proposed standard could be upgraded with relatively minor changes, manufacturers, including the small business manufacturers, would be able to maintain a viable number of product offerings. 75 FR 20112, 20231 (April 16, 2010).

In order to comply with the energy conservation standards promulgated in the April 2010 final rule, manufacturers of decorative hearth products with efficiencies lower than the minimum allowable standard and input ratings above 9,000 Btu/h would need to either: (1) Redesign their products to meet the required standard level for gas hearth direct heating equipment; (2) redesign their products to ensure that input ratings are below 9,000 Btu/h; or (3) discontinue manufacturing those products. In the April 2010 final rule, DOE assumed manufacturers would redesign their products with input rating below 9,000 Btu/h with relatively minor changes to existing decorative products. 75 FR 20112, 20129 (April 16, 2010). Under the amended definition of ''vented hearth heater'' proposed in this notice, the 9,000 Btu/h limitation would no longer apply for purposes of exclusion from the energy conservation standard. Instead, vented hearth products (regardless of input rating) would not be subject to the minimum standard for vented hearth heaters if they comply with the four criteria outlined above (*i.e.,* (1) Certified to ANSI Standard Z21.50 and not to ANSI Standard Z21.88); (2) sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (3) expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (4) with respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source). Under the April 2010 final rule, vented gas log sets were not addressed. However, under today's proposal, vented gas log sets would be required to either meet the energy conservation standard for vented hearth heaters or to meet the four criteria outlined above for their exclusion (which are the same as the criteria for vented hearth products, except that they must be certified to ANSI Z21.60, rather than ANSI Z21.50, as it is the applicable standard for gas log sets).

Each of the definitional criteria for decorative gas hearth products and vented gas log sets would have differing impacts on small business manufacturers. The first criterion (that the product must be certified to ANSI Standard Z21.50 and not ANSI Standard Z21.88 for decorative hearth products, and that the product must be certified to ANSI Z21.60 for gas log sets) would not impose new conversion costs on small businesses since DOE is not aware of any vented hearth products on the market that are not already certified to one of these standards. Products

considered by manufacturers to be decorative in nature are already certified to ANSI Standard Z21.50 (vented hearth products), and to ANSI Z21.60 (vented gas log sets). For these reasons, DOE believes that this criterion would not cause any additional compliance requirements for manufacturers, including small businesses.

Complying with the second and third criteria would require manufacturers to clearly identify the decorative nature of the vented hearth product and vented gas log set, as well as further detail the warranty provisions of the hearth product. These provisions would require an update of the product and marketing literature and product labeling, which DOE believes would result in added product conversion costs. However, DOE notes that product conversion costs to update manufacturer literature and labels will also be required under the definition and standards for gas hearth direct heating equipment (*i.e.,* vented hearth heaters) set forth by the April 2010 final rule, due to the requirements for making representations of the AFUE as well as certifying compliance to the Department. Under the April 2010 final rule, all of the product and marketing materials would have to have been revised to reflect the test AFUE. Because the compliance date for the standards promulgated in the April 2010 final rule is April 2013, DOE believes that manufacturers have likely not already updated product literature in preparation for compliance with those standards. Consequently, DOE estimated that all manufacturers, including small businesses, would continue to incur these product conversion cost under both rules for those products affected by the definitional change. Regarding the second criterion that eliminates the option for manufacturers to offer a thermostat with any decorative hearths, DOE does not believe that this would impose any additional costs or burdens because thermostats are optional features and their removal would not require any redesign of existing product lines. Further, many decorative hearths are not offered with an optional thermostat from the point of sale by the manufacturer, so DOE believes this criterion alone would have little impact on the existing market, but would provide additional assurance that decorative products are not being installed as heating appliances. Consequently, DOE believes that the second and third criteria would simply result in revising product specifications, marketing materials, and products labels to make clear the intended use of decorative hearths, which DOE believes would have a minimal impact on manufacturers, including small businesses.

Lastly, DOE considered the impacts of the final criterion to qualify for the decorative exclusion from the energy conservation standards for vented hearth heaters and vented gas log sets. That criterion requires manufacturers to eliminate standing pilot lights and other continuously-burning ignition devices from decorative vented hearth products by July 1, 2014 which would cause manufacturers to incur conversion costs to qualify for the proposed exclusion from the energy conservation standards. To calculate the conversion costs for decorative hearth products to remove standing pilots, DOE approximated the total number of product lines for decorative vented hearth products using the average number of annual shipments of decorative gas hearth products per product line, along with the average total shipments assumed for the analysis of national energy savings (*i.e.,* 460,000 units per year). To determine the average number of annual shipments of decorative gas hearth products per product line, DOE assumed that each decorative vented gas hearth product line has approximately the same number of annual shipments per line as the gas hearth products analyzed for the April 2010 final rule. Using this method, DOE found approximately 110 total decorative product lines. Using the assumption that 38 percent of decorative gas hearth products would have to remove standing pilots, 42 of these product lines would have to be upgraded by July 1, 2014. To calculate the conversion costs for vented gas log sets, DOE used market data and the assumptions for the per line conversion costs to remove standing pilots from gas hearth products. To determine the number of vented gas log product lines with standing pilots, DOE reviewed the company Web sites for all manufacturers of gas hearth products and all manufacturers that certify gas space heaters with the California Energy Commission (CEC) and are listed in CEC's appliance efficiency directory. DOE also conducted product searches to verify that it had captured all vented gas log sets that use a standing pilot. If it was not clear from the literature whether the vented gas log sets had a standing pilot, DOE assumed the product used a standing pilot. DOE found 35 vented gas log product lines that would need to be updated to remove the standing pilot ignition system by the July 1, 2014 deadline set in the proposed exclusion.

DOE believes that the elimination of standing pilot would only result in product conversion costs associated with testing and recertification to the ANSI safety standards for the newly designed products. If all 77 product lines need to be retested and recertified as a result of the incorporation of standing pilots into the system, the estimated product conversion cost would be approximately $693,000 for the industry to comply with the proposed July 1, 2014 exclusion criteria for both decorative gas hearth products and vented gas log sets. DOE does not believe any capital conversion costs would be needed for manufacturers to comply with the criterion for elimination of the standing pilot, because manufacturers would not need to make any changes to their existing facilities to incorporate this design change into their product lines. Overall, the total conversion costs with today's proposed amendments would be expected to be slightly lower than the total conversion costs for manufacturers of vented gas hearth heaters for the April 2010 final rule.

In considering the impacts of this requirement, DOE compared it to the alternative of leaving in place the requirements in the April 2010 final rule, assuming manufacturers chose not to design for a Btu rating lower than 9,000 Btu/h. If the definition of ''vented hearth heater'' were to remain as it was in the April 2010 final rule, manufacturers would have to redesign all decorative hearth products with input ratings over 9,000 Btu/h either to meet the minimum standard for gas hearth direct heating equipment or to have an input rating below 9,000 Btu/h, or discontinue manufacturing those products. Under the newly proposed definition, instead of completely redesigning those products to improve energy efficiency, manufacturers could make a comparatively minor engineering change of replacing the standing pilot or other continuously-burning ignition with an alternative technology such as an electronic ignition or interrupted ignition device. DOE believes that replacing the standing pilot or other continuously-burning ignition device with an alternative technology would be less burdensome to manufacturers than a complete redesign of decorative hearth products to meet the minimum standard or to have an input rating below 9,000 Btu/h. Moreover, a redesign to comply with the energy conservation standard would likely necessitate elimination of any standing pilot on units so equipped anyway, along with additional

engineering changes to improve efficiency. In addition, manufacturers would be required to test and certify their equipment to DOE efficiency's standards along with the ANSI safety standards, further increasing the cost and burden of compliance with the energy conservation standard in comparison to simply replacing the standing pilot or continuously-burning ignition with an alternative technology.

As a result of the considerations discussed above, DOE has concluded that today's proposal would not disproportionately impact small manufacturers of vented hearth products and vented gas logs. DOE requests comment on its assessment of the impact of today's proposal on small business manufacturers.

4. Duplication, Overlap, and Conflict with Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

5. Significant Alternatives to the Proposed Rule

The discussion above analyzes impacts on small businesses that would result from the amended definition for ''vented hearth heater,'' due to its effect on which units will be subject to energy conservation standards. DOE believes that the amended definition proposed in this notice would represent a similar burden on industry, including small business manufacturers, in comparison to the definition included in the April 2010 final rule. In that rule, DOE rejected the other alternatives to the rule because of the lower energy savings that associated with those alternatives.

DOE continues to seek input from businesses that would be affected by this rulemaking and will consider comments received in response to the NOPR for the development of final rule. This is identified as Issue 4 in section V.E, ''Issues on Which DOE Seeks Comment.''

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of direct heating equipment must certify to DOE that their products comply with any applicable energy conservation standards. In certifying compliance, manufacturers must test their products according to the DOE test procedures for direct heating equipment, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including direct heating equipment. (76 FR 12422 (March 7, 2011). The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). (44 U.S.C. 3501 *et seq.*) This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

DOE has prepared a draft environmental assessment (EA) of the impacts of the proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR Parts 1500–1508), and DOE's regulations for compliance with the National Environmental Policy Act of 1969 (10 CFR Part 1021). This assessment, which has been placed in the docket for this rulemaking, includes an examination of the potential effects of emission reductions likely to result from the rule in the context of global climate change, as well as other types of environmental impacts. The estimated additional cumulative CO_2 and NO_X emissions reductions for these proposed amendments to the energy conservation standards are 5.0 million metric tons (Mt) for CO_2 and 3.9 thousand metric tons (kt) for NO_X. Before issuing a final rule for direct heating equipment, DOE will consider public comments and, as appropriate, determine whether to issue a finding of no significant impact (FONSI) as part of a final EA or to prepare an environmental impact statement (EIS) for this rulemaking.

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (Aug. 10, 1999) imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have Federalism implications. The Executive Order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive Order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of today's proposed rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297) No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. 61 FR 4729 (Feb. 7, 1996). Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at *http://www.gc.doe.gov.*

Today's proposed rule does not contain a Federal intergovernmental mandate, because it will not require expenditures of $100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. DOE has considered expenditures that will result from updating manufacturer literature, product labels, and making design changes to decorative hearth products to eliminate the standing pilot light or other continuously-burning ignition source, and concluded that these expenditures will total less than $100 million. Accordingly, no further action is required under the UMRA.

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

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

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

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

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

K. Review Under Executive Order 13211

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

DOE has tentatively concluded that today's regulatory action, which sets forth amended definitions for direct heating equipment, is not a significant energy action because the proposed standards are not likely to have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as such by the Administrator at OIRA. Accordingly, DOE has not prepared a Statement of Energy Effects on the proposed rule.

L. Review Under the Information Quality Bulletin for Peer Review

On December 16, 2004, OMB, in consultation with the Office of Science and Technology Policy (OSTP), issued its Final Information Quality Bulletin for Peer Review (the Bulletin). 70 FR 2664 (Jan. 14, 2005). The Bulletin establishes that certain scientific information shall be peer reviewed by qualified specialists before it is disseminated by the Federal Government, including influential scientific information related to agency regulatory actions. The purpose of the bulletin is to enhance the quality and credibility of the Government's scientific information. Under the Bulletin, the energy conservation standards rulemaking analyses are ''influential scientific information,'' which the Bulletin defines as ''scientific information the agency reasonably can determine will have, or does have, a clear and substantial impact on important public policies or private sector decisions.'' *Id.* at 2667.

In response to OMB's Bulletin, DOE conducted formal in-progress peer reviews of the energy conservation standards development process and analyses and has prepared a Peer Review Report pertaining to the energy conservation standards rulemaking analyses. Generation of this report involved a rigorous, formal, and documented evaluation using objective criteria and qualified and independent reviewers to make a judgment as to the technical/scientific/business merit, the actual or anticipated results, and the productivity and management effectiveness of programs and/or projects. The ''Energy Conservation Standards Rulemaking Peer Review Report'' dated February 2007 has been disseminated and is available at the following Web site: *http://www1.eere.energy.gov/buildings/appliance_standards/peer_review.html.*

V. Public Participation

A. Attendance at the Public Meeting

The time, date, and location of the public meeting are listed in the **DATES** and **ADDRESSES** sections at the beginning of this notice. If you plan to attend the public meeting, please notify Ms. Brenda Edwards at (202) 586–2945 or *Brenda.Edwards@ee.doe.gov.* As explained in the **ADDRESSES** section, foreign nationals visiting DOE

Headquarters are subject to advance security screening procedures.

In addition, you can attend the public meeting via webinar. Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's Web site at: *http://www.eere.energy.gov/buildings/appliance_standards/residential/direct_heating.html.* Participants are responsible for ensuring their systems are compatible with the webinar software.

B. Procedure for Submitting Prepared General Statements for Distribution

Any person who has plans to present a prepared general statement may request that copies of his or her statement be made available at the public meeting. Such persons may submit requests, along with an advance electronic copy of their statement in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format, to the appropriate address shown in the **ADDRESSES** section at the beginning of this notice. The request and advance copy of statements must be received at least one week before the public meeting and may be e-mailed, hand-delivered, or sent by mail. DOE prefers to receive requests and advance copies via e-mail. Please include a telephone number to enable DOE staff to make follow-up contact, if needed.

C. Conduct of the Public Meeting

DOE will designate a DOE official to preside at the public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the public meeting. After the public meeting, interested parties may submit further comments on the proceedings as well as on any aspect of the rulemaking until the end of the comment period.

The public meeting will be conducted in an informal, conference style. DOE will present summaries of comments received before the public meeting, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will allow, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly and comment on statements made by others. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the public meeting.

A transcript of the public meeting will be included in the docket, which can be viewed as described in the *Docket* section at the beginning of this notice. In addition, copies of the transcript will be posted on the DOE Web site, and any person may buy a copy of the transcript from the transcribing reporter.

D. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or after the public meeting, but no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested parties may submit comments, data, and other information using any of the methods described in the **ADDRESSES** section at the beginning of this notice.

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

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

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

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

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

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

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not

secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

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

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

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

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

E. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

1. Given the lack of a statutory definition for ''direct heating equipment,'' whether DOE's interpretation that decorative vented hearth products and vented gas log sets are types of direct heating equipment is reasonable.

2. The proposed compliance date for vented gas hearth products and vented gas log sets, including specific rationales and accompanying data as to why a different timeline for eliminating standing pilots or other continuously-burning ignition sources from decorative gas hearth products may or may not be warranted.

3. The proposed exclusion as a decorative vented hearth product or vented gas log set from the energy conservation standard.

4. Impacts of the proposed amended definition of ''vented hearth heater'' on small business manufacturers of decorative vented hearth products or vented gas log sets.

VI. Approval of the Office of the Secretary

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

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, and Small businesses.

Issued in Washington, DC, on July 14, 2011.

Kathleen Hogan,

Deputy Assistant Secretary for Energy Efficiency, Office of Technology Development, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, DOE proposes to amend Part 430 of Chapter II, Subchapter D, of Title 10 of the Code of Federal Regulations, to read as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

2. Section 430.2 is amended by revising the definition for ''vented hearth heater'' to read as follows:

§ 430.2 Definitions.

* * * * *

Vented hearth heater means a vented appliance which simulates a solid fuel fireplace and is designed to furnish warm air, with or without duct connections, to the space in which it is installed. The circulation of heated room air may be by gravity or mechanical means. A vented hearth heater may be freestanding, recessed, zero clearance, or a gas fireplace insert or stove. The following products are not subject to the energy conservation standards for vented hearth heaters:

(1) Vented gas log sets that meet all of the following four criteria:

(i) Certified to ANSI Standard Z21.60; (ii) Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (iii) Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (iv) With respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source; and

(2) Vented gas hearth products that meet all of the following four criteria:

(i) Certified to ANSI Standard Z21.50 and not to ANSI Standard Z21.88; (ii) Sold without a thermostat and with a warranty provision expressly voiding all manufacturer warranties in the event the product is used with a thermostat; (iii) Expressly and conspicuously identified on its rating plate and in all manufacturer's advertising and product literature as a ''Decorative Product: Not For Use As A Heating Appliance''; and (iv) With respect to products sold after July 1, 2014, not equipped with a standing pilot light or other continuously-burning ignition source.

* * * * *

[FR Doc. 2011–18310 Filed 7–21–11; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Chapter II

[Docket No. OP–1427]

Continued Application of Regulations to Savings and Loan Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of intent and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (''Board'') is issuing this notice of its intention to continue to enforce certain regulations previously issued by the Office of Thrift Supervision (''OTS'') after assuming supervisory responsibility for savings and loan holding companies (''SLHCs'')

and their non-depository subsidiaries from the OTS in July 2011. The Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'' or ''Act'') transfers supervisory functions related to SLHCs and their non-depository subsidiaries to the Board on July 21, 2011 (''transfer date'').

DATES: Comments must be submitted on or before August 31, 2011.

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

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include docket number OP–1427 in the subject line of the message.
- *FAX:* 202/452–3819 or 202/452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Amanda K. Allexon, Counsel, (202) 452–3818 or Kathleen O'Day, Deputy General Counsel, (202) 452–3786, Legal Division; Anna Lee Hewko, Assistant Director, (202) 530–6260, or Michael Sexton, Manager, (202) 452–3009, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869).

SUPPLEMENTARY INFORMATION:

Background

The Dodd-Frank Act was enacted on July 21, 2010. Title III of the Dodd-Frank Act transfers to the Board supervisory functions of the OTS related to SLHCs and their non-depository subsidiaries. The Act transfers supervisory functions related to Federal savings associations and state savings associations to the Office of the Comptroller of the Currency (''OCC'') and the Federal Deposit Insurance Corporation (''FDIC''), respectively.

With respect to the supervision of SLHCs and their non-depository subsidiaries, section 312 of the Dodd-Frank Act (12 U.S.C. 5412) provides that all functions of the OTS and the Director of the OTS (including authority to issue orders) will transfer to the Board on July 21, 2011. All rulemaking authority related to SLHCs also will transfer to the Board on that date pursuant to section 312 of the Act. Section 316 of the Dodd-Frank Act provides that all orders, resolutions, determinations, agreements, and regulations, interpretive rules, other interpretations, guidelines, and other advisory materials issued, made, prescribed, or allowed to become effective by the OTS on or before the transfer date with respect to SLHCs and their non-depository subsidiaries will remain in effect and shall be enforceable until modified, terminated, set aside, or superseded in accordance with applicable law by the Board, by any court of competent jurisdiction, or by operation of law. The Act includes parallel provisions applicable to the OCC and the FDIC with respect to Federal savings associations and state savings associations, respectively.

Given the extensive transfer of authority to multiple agencies, section 316 of the Dodd-Frank Act (12 U.S.C. 5414(c)) requires the Board, OCC, and FDIC to identify and publish in the **Federal Register** separate lists of the current OTS regulations that each agency will continue to enforce after the transfer date. The Board is, therefore, issuing this notice in accordance with section 316 of the Dodd-Frank Act. This notice identifies all OTS regulations applicable to SLHCs and their non-depository subsidiaries that the Board currently intends to enforce after the transfer date.

On or immediately after the transfer date, the Board intends to issue an interim final rule to effectuate the transition of OTS regulations to the Board. That rule will include technical, nomenclature, and other changes to certain OTS regulations to accommodate the transfer of supervisory authority from the OTS to the Board and address modifications made by the Dodd-Frank Act. The Board also expects to modify its own rules related to agency administration and procedure, where necessary, to account for the transfer of authority on or after the transfer date. When finalizing that rulemaking, the Board will take into consideration any comments received on this notice as well as those received on the interim final rule. In the future, the Board may propose substantive modifications to rules regarding SLHCs and their non-depository subsidiaries in order to address other modifications made by the Dodd-Frank Act and consolidate rules within the Board's regulatory structure.

Continuing Regulations

The regulations currently applicable to SLHCs and their non-depository subsidiaries are found in Chapter V of Title 12 of the Code of Federal Regulations. The following narrative provides a description of the parts of Chapter V that the Board expects to continue to enforce after July 21, 2011. Following the narrative, a chart is provided that lists each OTS part and the Board's current intention regarding enforcement of such part. The Board notes that failure to transfer an OTS regulation does not relieve any entity of the obligation to comply with all statutory requirements.

Parts 574 though 585 include many of the rules that relate to the supervision of SLHCs, including those concerning the acquisition of savings associations, mutual holding companies, permissible activities, and prohibited service by certain individuals. The Board intends to enforce the substantive provisions of parts 574 through 585 after the transfer date, including the requirements for filing applications and the factors for reviewing such applications. The Board, however, does not expect to transfer provisions in parts 574 though 585 regarding the processing of applications and notices, such as agency review periods, publication requirements, and hearing procedures (including those applicable as a result of cross-references to part 516). Instead, beginning on the transfer date, the Board anticipates adopting the application procedures currently used by bank holding companies (''BHCs'') to equivalent applications and notices submitted by SLHCs. Additionally, the Board anticipates eliminating the current OTS regulations relating to control determinations and rebuttals, including the rebuttable control factors and process in § 574.4, the certification of ownership in § 574.5, and the rebuttal agreement in § 574.100. In its place, the Board expects to insert provisions equivalent to those applicable to BHCs and, beginning on the transfer date, review investments and relationships with SLHCs using the current practices and policies applicable to BHCs, including the Board's policy statement on noncontrolling equity investments issued on September 22, 2008. The

Board does not anticipate revisiting OTS determinations with respect to existing investments and ownership structures. In the near future, the Board anticipates proposing rules that would update and streamline regulations related to control determinations for both BHCs and SLHCs.

The Board intends to enforce certain definitional provisions (parts 541, 561, and 583), as well as parts 533 and 563f to the extent they are directly or indirectly applicable to the supervision of SLHCs and their non-depository subsidiaries. Additionally, the Board expects to enforce certain relevant provisions of part 562 that provide regulatory reporting requirements. The Board, however, issued a notice on February 8, 2011, indicating that it is considering transitioning SLHCs to the Board's current reporting system as soon as practicable.[1] Currently, the Board is reviewing comments received on that notice and is considering issuing a notice of proposed rulemaking on or after the transfer date outlining a proposal on SLHC reporting that may affect part 562 and part 584.

Current OTS rules often integrate regulatory requirements and supervision for both SLHCs and savings associations. As a result, certain regulations that only reference savings associations also may apply to SLHCs (and in particular to mutual holding companies) and their non-depository subsidiaries through cross-references. The Board, therefore, anticipates enforcing parts 546, 552, 559, 563, 563b, 563c, 563e, and 563g, and §§ 543.1(b), 544.2, 544.5, 544.8, 545.95, 545.121, and 565.4. The Board anticipates enforcing part 512 regarding investigative and formal examination proceedings because the Board does not have similar rules currently in place for BHCs.

The Board does not anticipate enforcing parts 500, 503 through 510, 513, 516, 517, and 528 after the transfer date. These parts include agency-specific administrative provisions and, as noted above, the Board anticipates modifying its own rules in this area on or after the transfer date to account for the transfer of authority.

Part 502 itemizes the current assessment fee schedule for OTS-supervised institutions. The Board does not currently charge BHCs or state member banks (''SMBs'') for examinations or inspections. However, section 318 of the Dodd-Frank Act (12 U.S.C. 248) requires the Board to charge fees to offset the cost of regular or special examinations of BHCs, SLHCs and other nonbanking financial companies over $50 billion. As a result, the Board does not anticipate enforcing part 502 and, instead, plans to issue comprehensive guidance with respect to assessment fees on or after the transfer date.

Additionally, the Board does not expect to enforce parts 535, 536, 550, 551, 555, 557, 558, 560, 563d, 564, 567, 568, 569, 570, 571, 572, 573, 590, and 591. The Board believes these provisions only apply to the supervision of savings associations and are not applicable to SLHCs or their non-depository institutions.

The Board reserves the right to continue to enforce any regulation or policy of the OTS if it determines after further review that the rule or policy was applied by the OTS to SLHCs or is otherwise required by law.

The following chart summarizes which parts and sections of Chapter V the Board currently expects to continue to enforce after July 21, 2011.

OTS Part	Subject	Continuing provisions	Basis for decision
500	Agency organization and function	None	Internal agency administration.
502	Assessments and fees	None	Internal agency administration and modifications required by the Dodd-Frank Act.
503	Privacy Act	None	Internal agency administration.
505	Freedom of Information Act	None	Internal agency administration.
506	Information collection requirements under the Paperwork Reduction Act.	None	Internal agency administration.
507	Restrictions on post-employment activities of senior examiners.	None	Internal agency administration.
508	Removals, suspensions, and prohibitions where a crime is charged or proven.	None	Internal agency administration.
509	Rules of practice and procedure in adjudicatory proceedings.	None	Internal agency administration.
510	Miscellaneous Organizational Regulations	None	Internal agency administration.
512	Rules for investigative proceedings and formal examination proceedings.	All of part	Applies directly to SLHCs.
513	Practice before the Office	None	Internal agency administration.
516	Application processing procedures	None	Replacing with Board processes within specific regulations.
517	Contracting outreach programs	None	Internal agency administration.
528	Nondiscrimination requirements	None	Internal agency administration.
533	Disclosure and reporting of CRA-related agreements.	All of part	Applies directly to SLHCs.
535	Unfair or deceptive acts or practices	None	Applies to savings associations only.
536	Consumer protection in sales of insurance	None	Applies through the savings association.
541	Definitions for regulations affecting Federal savings associations.	Some of part	Relevant to SLHC provisions.
543	Federal mutual savings associations—Incorporation, organization, and conversion.	Some of part (Section 543.1(b) (resulting from cross-reference in part 575)).	Applicable to SLHC as a result of a cross-reference.

[1] Notice of Intent to Require Reporting Forms for Savings and Loan Holding Companies, 76 Fed. Reg. 7091 (Feb. 8, 2011).

OTS Part	Subject	Continuing provisions	Basis for decision
544	Federal mutual savings associations—Charter and bylaws.	Some of part (Sections 544.2, 544.5, and 544.8 (resulting from cross-reference in part 575)).	Applicable to SLHC as a result of a cross-reference.
545	Federal savings associations—Operations	Some of part (Sections 545.95 and 545.121 (resulting from cross-reference in part 575)).	Applicable to SLHC as a result of a cross-reference.
546	Federal mutual savings associations—Merger, dissolution, reorganization, and conversion.	All of part (resulting from cross-reference in part 575).	Applicable to SLHC as a result of a cross-reference.
550	Fiduciary powers of savings associations	None of part	Applies to savings associations only.
551	Recordkeeping and confirmation requirements for securities transactions.	None	Applies to savings associations only.
552	Federal stock associations—Incorporation, organization, and conversion.	All of part (resulting from cross-reference in part 575 and others).	Applicable to SLHC as a result of a cross-reference.
555	Electronic operations	None	Applies to savings associations only.
557	Deposits	None	Applies to savings associations only.
558	Possession by conservators and receivers for Federal and State savings associations.	None	Applies to savings associations only.
559	Subordinate organizations	All of part (resulting from cross-reference in part 575).	Applicable to SLHC as a result of a cross-reference.
560	Lending and investment	None	Applies to savings associations only.
561	Definitions for regulations affecting all savings associations.	Some of part	Relevant to SLHC provisions.
562	Regulatory reporting standards	Some of part	Applies directly to SLHCs.
563	Savings Associations—Operations	All of part (resulting from cross-reference in part 575 and others).	Applicable to SLHC as a result of a cross-reference.
563b	Conversions from mutual to stock form	All of part (resulting from cross-reference in part 575).	Applicable to SLHC as a result of a cross-reference.
563c	Accounting requirements	All of part	Applicable to SLHC as a result of a cross-reference.
563d	Securities of savings associations	None	Applies to savings associations only.
563e	Community reinvestment	Some of part	Applicable to SLHC as a result of a cross-reference.
563f	Management official interlocks	All of part	Applies directly to SLHCs.
563g	Securities offerings	All of part (resulting from cross-reference in part 575).	Applicable to SLHC as a result of a cross-reference.
564	Appraisals	None	Applies to savings associations only.
565	Prompt corrective action	Some of part (Section 565.4 (resulting from cross-reference in part 575)).	Applicable to SLHC as a result of a cross-reference.
567	Capital	None	Applies to savings associations only.
568	Security procedures	None	Applies to savings associations only.
569	Proxies	None	Applies to savings associations only.
570	Safety and soundness guidelines and compliance procedures.	None	Applies to savings associations only.
571	Fair Credit Reporting	None	Transferred to new agency..
572	Loans in areas having special flood hazards.	None of part	Applies to savings associations only.
573	Privacy of consumer financial information	None of part	Applies to savings associations only.
574	Acquisition of control of savings associations.	Some of part	Applies directly to SLHCs. The Board will replace current OTS application processing procedures. The Board also will replace provisions related to control determinations and rebuttals.
575	Mutual holding companies	Some of part	Applies directly to SLHCs. The Board will replace current OTS application processing procedures.
583	Definitions for regulations affecting savings and loan holding companies.	All of part	Relevant to SLHC provisions.
584	Savings and loan holding companies	All of part	Applies directly to SLHCs. The Board will replace current OTS application processing procedures.
585	Prohibited service at savings and loan holding companies.	All of part	Applies directly to SLHCs.
590	Preemption of State usury laws	None	Applies to savings associations only.
591	Preemption of State due-on-sale laws	None	Applies to savings associations only

By this notice, the Board seeks to inform interested persons, including SLHCs and their non-depository subsidiaries, of the Board's approach to enforcement of certain OTS regulations and invites comment on its intended

approach in order to help identify issues and matters that may require special attention. The Board requests specific comment with respect to whether all regulations relating to the supervision of SLHCs are included in the listing above. Alternatively, does this notice indicate continued enforcement of regulatory provisions that currently do not apply to SLHCs or their non-depository subsidiaries?

By order of the Board of Governors of the Federal Reserve System, July 14, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–18100 Filed 7–21–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109006–11]

RIN 1545–BK13

Modifications of Certain Derivative Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to whether an exchange for purposes of § 1.1001–1(a) occurs for the nonassigning counterparty when there is an assignment of certain derivative contracts. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by October 20, 2011. Outlines of topics to be discussed at the public hearing scheduled for Thursday, October 27, 2011, must be received by Thursday, October 20, 2011.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–109006–11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–109006–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–109006–11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Andrea Hoffenson, (202) 622–3920; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1001. The temporary regulations provide that the transfer or assignment of a derivative contract in certain situations is not an exchange to the nonassigning counterparty for purposes of § 1.1001–1(a). The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, October 27, 2011, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter through the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by Thursday, October 20, 2011. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Andrea M. Hoffenson, Office of Associate Chief Council (Financial Institutions and Products). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1001–4 is revised to read as follows:

§ 1.1001–4 Modifications of certain derivative contracts.

[The text of the proposed amendments to § 1.1001–4 is the same as the text for § 1.1001–4T(a) through (d)

published elsewhere in this issue of the **Federal Register**].

Steven T. Miller,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2011–18531 Filed 7–21–11; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2011–0589]

RIN 1625–AA00

Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the waters of the New River, from Esplanade Park to the Henry Kinney Tunnel, in Fort Lauderdale, Florida during the Rotary Club of Fort Lauderdale New River Raft Race. The race is scheduled to take place on Saturday, November 19, 2011. The temporary safety zone is necessary for the safety of race participants, participant vessels, spectators, and the general public during the 550-yard raft race. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before September 9, 2011. Requests for public meetings must be received by the Coast Guard on or before August 10, 2011.

ADDRESSES: You may submit comments identified by docket number USCG–2011–0589 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@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:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2011–0589), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. 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 Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* click on the ''submit a comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu select ''Proposed Rule'' and insert ''USCG–2011–0589'' in the ''Keyword'' box. Click ''Search'' then click on the balloon shape in the ''Actions'' column. 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 may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble 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–2011–0589'' and click ''Search.'' Click the ''Open Docket Folder'' in the ''Actions'' column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Public meeting

We do not now plan to hold a public meeting. But you may submit a request for a public meeting on or before August 10, 2011 using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Basis and Purpose

The legal basis for the proposed rule is the Coast Guard's authority to establish regulated navigation areas and other limited access areas: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Public Law 107–295, 116 Stat. 2064;

Department of Homeland Security Delegation No. 0170.1.

The purpose of the proposed rule is to ensure the safety of race participants, participant vessels, spectators, and the general public during the Rotary Club of Fort Lauderdale New River Raft Race.

Discussion of Proposed Rule

On November 19, 2011, the Rotary Club of Fort Lauderdale New River Raft Race will be held on the New River in Fort Lauderdale, Florida. This event consists of a 550 yard raft race on the New River starting at Esplanade Park and finishing at the Henry Kinney Tunnel. Approximately 100 participants are scheduled to compete in the race.

The proposed rule would establish a temporary safety zone around the race area of the Rotary Club of Fort Lauderdale New River Raft Race on the New River, in Fort Lauderdale, Florida. The temporary safety zone would be enforced from 11:59 a.m. until 2:30 p.m. on November 19, 2011. Persons and vessels would be prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port Miami or a designated representative. Persons and vessels desiring to enter, transit through, anchor in, or remain within the safety zone would be able to contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the safety zone were granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization would have to comply with the instructions of the Captain of the Port Miami or a designated representative. The Coast Guard would provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

Regulatory Analyses

We developed this proposed 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

Executive Orders 12866 (''Regulatory Planning and Review'') and 13563 (''Improving Regulation and Regulatory Review'') direct agencies to assess the 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 NPRM has not been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget. A draft regulatory assessment follows:

The economic impact of this proposed rule is not significant for the following reasons: (1) The safety zone would be enforced for less than three hours; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the safety zone without authorization from the Captain of the Port Miami or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the safety zone if authorized by the Captain of the Port Miami or a designated representative; and (4) the Coast Guard would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the New River encompassed within the safety zone from 11:59 a.m. until 2:30 p.m. on November 19, 2011. For the reasons discussed in the Executive Order 12866 and Executive Order 13563 section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Paul A. Steiner, Sector Miami Prevention Department, Coast Guard; telephone 305–535–8724, e-mail *Paul.A.Steiner@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed rule would 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone, as described in paragraph 34(g) of the Instruction, on the waters of the New River in Fort Lauderdale, Florida that will be enforced for less than three hours. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add a temporary § 165.T07–0589 to read as follows:

§ 165.T07–0589 Safety Zone; Rotary Club of Fort Lauderdale New River Raft Race, New River, Fort Lauderdale, FL.

(a) *Regulated Area.* The following regulated area is a safety zone. All waters of the New River contained within an imaginary line connecting the following points: starting at Point 1 in position 26°07′10″ N, 80°08′52″ W; thence southeast to Point 2 in position 26°07′05″ N, 80°08′34″ W; thence southwest to Point 3 in position 26°07′04″ N, 80°08′35″ W thence northwest to Point 4 in position 26°07′08″ N, 80°08′52″ W; thence north back to origin. All coordinates are North American Datum 1983.

(b) *Definition.* The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the Captain of the Port Miami or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Miami by telephone at 305–535–4472, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Effective Date.* This rule is effective from 11:59 a.m. until 2:30 p.m. on November 19, 2011.

Dated: July 8, 2011.

G.J. Depinet,

Captain, U.S. Coast Guard, Acting Captain of the Port Miami.

[FR Doc. 2011–18482 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–04–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1258

[NARA–11–0002]

RIN 3095–AB71

NARA Records Reproduction Fees

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to change its regulations to add the methodology for creating and changing records reproduction fees, to remove records reproduction fees found in its regulations, and to provide a notification process for the public of new or proposed fees. This proposed rule covers reproduction of Federal or Presidential records accessioned, donated, or transferred to NARA. This rule will affect members of the public.

DATES: Comments are due by September 20, 2011

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* Submit comments by facsimile transmission to 301–837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Planning Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Stuart Culy on (301) 837–0970.

SUPPLEMENTARY INFORMATION: The National Archives Trust Fund Board (NATF) supports the programs of NARA through a variety of activities, including the servicing of requests for the reproduction of records. Researchers may order electrostatic, digitized and microfilm copies of textual (paper) records, reproductions of still pictures, motion pictures, sound records, videotapes, maps, architectural drawings, computer data sets, and other records. NARA is proposing to remove from the Code of Federal Regulations (CFR) the fees for reproduction of Federal or Presidential records accessioned, donated, or transferred to NARA and maintain its fee schedule on NARA's Web site *http://www.archives.gov.* The proposed regulations will provide a notification process to advise the public on new fees or revisions to existing fees and it will also provide the methodology for creating and changing fees.

NARA's Reproduction Fee Methodology

The statutory authority for the NARA Trust Fund provides for the recovery of their costs plus 10 percent. Records reproduction fees are developed by the process as contained in the proposed regulations. The current fees are based on the usual costs, such as salaries, equipment, travels, and supplies. However, NARA also has some unique circumstances in the development of its costs because of the unique characteristics of the records such as the fragility of the documents that necessitate additional manual handling or the varying degree of legibility of the original documents. If the information on the original document is faint or too dark, it requires additional time to obtain a readable image.

In TABLE 1 below, the National Archives Trust Fund (NATF) illustrates its baseline costs for records reproductions in DC-area and regional archives for fiscal year 2010.

TABLE 1—NATF RECORDS REPRODUCTION COSTS TO BE RECOVERED

Cost item	FY 2010
Salaries and benefits	$1,848,646
Travel and transportation	69,559
Rent, communications and utilities	225,184
Printing and reproductions	11,779
Consulting and other services	733,736
Payments to other agencies/funds	2,961,849
Supplies and materials	243,475
Depreciation	0
System upgrades/replacement	400,000
Total	6,494,228

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Parts 1258

Archives and records.

For the reasons set forth in the preamble, NARA revises part 1258 of title 36, Code of Federal Regulations., to read as follows:

PART 1258—FEES

Sec.

1258.1 What are the authorities for this part?
1258.2 What definitions apply to the regulations in part 1258?
1258.4 What costs make up the NARA fees?
1258.6 How does NARA calculate fees for individual products?
1258.8 How does NARA change fees for existing records reproductions?
1258.10 How does NARA develop and publicize new records reproduction fees?
1258.12 When does NARA provide reproductions without charge?
1258.14 What is NARA's payment policy?
1258.16 What is NARA's refund policy?
1258.18 Where can I find NARA's current fees and order reproductions?

Authority: 44 U.S.C. 2116(c) and 44 U.S.C. 2307

§ 1258.1 What are the authorities for this part?

The regulations in this part implement the provisions of 44 U.S.C. 2116(c) and 44 U.S.C. 2307.

§ 1258.2 What definitions apply to the regulations in part 1258?

Accession means the method of acquiring archival records or donated materials from various Governmental bodies.

Archival records means records that have been accessioned into the legal custody of NARA, donated historical materials in the legal custody of NARA and its Presidential libraries, and Congressional, Supreme Court, and other historical materials in NARA's physical custody and for which NARA has a formal agreement for their permanent retention.

Certification means affixing a seal to copies certifying the copies are a valid reproduction of a file; this service is available for an additional fee.

Cost means the total amount of money spent by the NATF for providing services including, but not limited to, salaries; benefits; rent; communication and utilities; printing and reproductions; consulting and other services; payments to other agencies/funds; supplies and materials; depreciation; system upgrades/replacements; etc.

Custodial units mean NARA's Federal Records Centers, National Personnel Records Center, archival reference operations nationwide, and Presidential Libraries.

Fee means the price researchers pay for reproductions of records. Certification of records is also a reproduction fee.

Records center records means Federal records in the physical custody of NARA records centers, but still in the legal custody of the agencies that created and maintained them.

§ 1258.4 What costs make up the NARA fees?

(a) 44 U.S.C. 2116(c) allows the NATF to recover all of its costs for providing records reproduction services to the public. The vast majority of materials that are reproduced are from the holdings of NARA, which require special handling, due to the age, condition and historical significance. Examples of special handling include the following:

(1) *The placement of each record by hand on the reproduction equipment.* Many of the records are fragile and have historical uniqueness; reproduction equipment operators must take great care in handling these records. For example, each page of a document must be carefully placed by hand on the reproduction equipment, a copy made, the page removed, and the process re-started.

(2) *Clarity and legibility of the reproduced records.* Older records may be handwritten and darkened from age, which requires extra time to make sure we produce copies that are as clear and legible as possible.

(3) *Inability to use automatic document feeders.* Because of the requirements in (1), automatic document feeders cannot be used for the duplication of paper materials. This adds time and cost to the price of copying these irreplaceable documents.

(b) The NATF costs, at a minimum, include:

(1) Salaries and benefits of the NATF staff involved in all aspects of the records reproduction process (includes, but is not limited to, compensation for full- and part-time employees, temporary appointments, overtime, awards, Civil Service Retirement Service and Federal Employees' Retirement System contributions, health benefits, life insurance benefits and Thrift Savings Plan contributions).

(2) Travel and transportation (includes, but is not limited to, travel and transportation of persons, transportation of things, and contract mail service).

(3) Rent, communications and utilities (includes, but is not limited to, telecommunications, equipment rental, and postage).

(4) Printing and reproductions (includes, but is not limited to, commercial printing, advertising, and printing of forms).

(5) Consulting and other services (includes, but is not limited to, management and professional services, contract labor, work performed in support of reproduction orders, and maintenance of equipment).

(6) Payments to other agencies/funds (includes, but is not limited to, reimbursements and payments to other agencies and other funds within NARA). Specifically, the NATF ''hires'' the NARA custodial units to do reproduction work. In return, the NATF reimburses the custodial units for the cost of salaries and benefits.

(7) Supplies and materials (includes, but is not limited to, general supplies, and materials and parts).

(8) Depreciation (spreading the cost of an asset over the span of several years).

(9) System upgrades/replacement (includes, but is not limited to, installation of operating equipment, software upgrades, and system changes).

§ 1258.6 How does NARA calculate fees for individual products?

NARA calculates the fees for individual products using the following:

(a) *Cost Summary.* A summary of all costs incurred by the NATF in providing records reproduction services.

(b) *Percent of Revenue.* The percentage of the total NATF revenue represented by sales of a product. This is determined and used where a more accurate percentage based upon actual usage is not available. To calculate this percentage, an analysis is made to determine the current percent of NATF sales revenue represented by each product line. The sales volume is then reviewed with the custodial units to determine if this represents anticipated sales.

(c) *Actual Cost Percent Calculation.* Using the information calculated in the Cost Summary, the actual revenue cost percentage is determined. In some cases, the actual percentage of cost can be calculated from available data or known constraints of the product line. For example, if the contractor responsible for providing copy support does not support the reproduction of a given product line then zero (0) percent of the contractor's costs would be allocated to that product line.

(d) *Forecasted Volume.* The prediction of a product's sales volume in future year(s). These estimates are made by working with the custodial units and taking into account historical sales volume. An annual percent change is then estimated.

(e) *Reimbursements to the Custodial Units.* The amount paid to the custodial units for records reproductive services in support of NATF customer orders. The NATF reimburses the custodial units for services rendered to the NATF for the reproduction of NARA holdings. To determine the reimbursement per copy for an item, past reimbursement fees are changed by the compounded annual Government salary changes as issued by the Office of Personnel Management for the fiscal years being projected. The new rates are reviewed with custodial unit personnel and adjustments are made as required.

(f) *Additional Cost Allocation.* The costs unique to a given product line. Each product line is evaluated to determine the costs that are unique to that product line, such as purchase and installation costs of specialty equipment, replacement costs for aging equipment, copier leases and maintenance costs, etc. These costs are then allocated against those product lines that use the equipment. Where costs cross product lines, the allocations are apportioned based upon the percent of the estimated copy volume for each product line.

(g) *Fee Calculation.* The product fee is calculated by the following formula:{[(Percent of Revenue * NATF Overhead Costs) + Reimbursement + Additional Costs]/Projected Sales Volume}

This calculation is completed for each product.

(h) *Final Review.* After the suggested new fees are calculated, NATF reviews them to establish the final fees. Fees may be adjusted across product lines to ensure that the NATF can succeed in total cost recovery.

§ 1258.8 How does NARA change fees for existing records reproductions?

(a) The NATF conducts periodic reviews of its fees to ensure that the costs of providing services to the public are properly recovered.

(b) Existing records reproduction fees may be adjusted annually based on the following factors:

(1) Inflation.

(2) The Office of Personnel Management (OPM) salary changes.

(3) Reallocation of shared costs across product lines using the methodology described in § 1258.6.

(4) The projected sales volume for the product.

(5) The actual sales volume for the product.

(6) The approval of the Archivist of the United States.

(c) NARA will place a notice on our Web site (*http://www.archives.gov*) annually when announcing that records reproduction fees will be adjusted in accordance with this regulation.

§ 1258.10 How does NARA develop and publicize new records reproduction fees?

(a) Custodial units prepare a justification proposal for a proposed records reproduction service and send the justification to the custodial unit office head, through appropriate channels, for concurrence and forwarding to NATF. The justification proposal includes, at a minimum, the following information:

(1) Estimated monthly volume of product orders based on available historical data;

(2) Identification of the equipment and supplies required to provide the product and service;

(3) Brief description of the process required to provide the product and

service, including the amount of time for each number and grade level of staff.

(4) Identification of any services or products that will be replaced by the proposed products and services;

(5) Identification of other NARA units that may have a demand for the proposed services; and

(6) Any other relevant information.

(b) After receiving the proposal, NATF staff:

(1) Assesses the potential customer base for the proposed products and services, consulting other NARA offices.

(2) If the potential demand does not warrant establishing fees for new records reproduction products and services, NATF notifies the proposing office that the new product and service are not approved and the reasons why.

(3) If the potential demand warrants, NATF prepares a cost analysis following the methodology in § 1258.6 and develops a proposed recommended fee for review by NARA's Financial Resources Division and approval by the Archivist of the United States.

(c) Notification of new records reproduction services and trial periods:

(1) The public will be notified of new records reproduction services, including the business case for determining initial fee, on-line at *http://www.archives.gov,* by press releases, and through NARA's social media outlets.

(2) New records reproduction services fees have an initial trial period of one year. During this time, the public is encouraged to provide feedback to NARA about the new records reproduction services and their fees as directed in the notification of the new services.

(3) Prior to the expiration of a trial period, NATF will assess the validity of the fees for the new records reproduction products and services, and make one of three determinations:

(i) Retain products, services and fees;

(ii) Retain products or services but adjust fees up or down; or

(iii) Discontinue products or services.

(d) The public will be notified of NATF determination, including business case for determination, in NARA research rooms nationwide, on-line at *http://www.archives.gov,* press releases, and through NARA's social media outlets.

§ 1258.12 When does NARA provide records reproductions without charge?

At the discretion of the Secretary of the NATF, customers are not charged a fee for records reproductions or certifications in the instances described in this section.

(a) When NARA furnishes copies of records to other elements of the Federal Government. However, a fee may be charged if the appropriate director determines that the service cannot be performed without reimbursement;

(b) When NARA wishes to disseminate information about its activities to the general public through press, radio, television, and newsreel representatives;

(c) When the reproduction is to furnish the donor of a document or other gift with a copy of the original;

(d) When the reproduction is for individuals or associations having official voluntary or cooperative relations with NARA in its work;

(e) When the reproduction is for a foreign, State, or local government or an international agency and furnishing it without charge is an appropriate courtesy; and

(f) For records of other Federal agencies in NARA Federal records centers only:

(1) When furnishing the service free conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former Government employees;

(2) When the reproduction of not more than one copy of the document is required to obtain from the Government financial benefits to which the requesting person may be entitled (*e.g.,* veterans or their dependents, employees with workmen's compensation claims, or persons insured by the Government);

(3) When the reproduction of not more than one copy of a hearing or other formal proceeding involving security requirements for Federal employment is requested by a person directly concerned in the hearing or proceeding; and

(4) When the reproduction of not more than one copy of a document is for a person who has been required to furnish a personal document to the Government (*e.g.,* a birth certificate required to be given to an agency where the original cannot be returned to the individual).

§ 1258.14 What is NARA's payment policy?

Fees may be paid:

(a) By check or money order made payable to the *National Archives Trust Fund.*

(b) By selected credit cards.

(c) Payments from outside the United States must be made by international money order payable in U.S. dollars or a check drawn on a U.S. bank.

(d) In cash (note that some locations do not accept cash).

§ 1258.16 What is NARA's refund policy?

Due to the age, original media type, and general condition of many of the items in NARA's holdings, it is occasionally difficult to make a legible reproduction. NARA staff will notify customers if they anticipate that the original will result in a reproduction of questionable legibility before requesting the reproduction and after approval of the customer. After a records reproduction is completed, the product undergoes a review to determine if it is an accurate representation of the original item. Because of the preapproval process, NARA does not provide refunds except in special cases. If a customer requests a refund, a review is made of the order to determine if the customer was properly notified of the questionable nature of the original and if the product is a true representation of the original. If the customer authorized proceeding and the product is a true representation of the original, no refund will be issued.

§ 1258.18 Where can I find NARA's current fees and information on how to order reproductions?

(a) NARA's fee schedule and ordering portal are located at *http://www.archives.gov.*

(b) Fee schedules for reproductions made from the holdings of Presidential libraries may differ because of regional cost variations. Presidential library fee schedules are available at *http://www.archives.gov/presidential-libraries/.* Some services may not be available at all NARA facilities.

(c) In order to preserve certain records which are in poor physical condition, NARA may restrict customers to photographic or other kinds of duplication instead of electrostatic copies.

Dated: July 15, 2011.

David S. Ferriero,

Archivist of the United States.

[FR Doc. 2011–18675 Filed 7–21–11; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–R09–OAR–2011–0130; FRL–9442–3]

Regional Haze State Implementation Plan; State of Nevada; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: On June 22, 2011, the EPA proposed to approve the Nevada State Implementation Plan (SIP) to implement the regional haze program for the first planning period through July 31, 2018. The EPA is extending the deadline for written comments on the proposed approval of the Regional Haze SIP by 30 days to August 22, 2011. The EPA received requests for an extension from attorneys representing a consortium of environmental groups and the Moapa Paiutes Tribe. The requests were based on a need for more time to review the technical materials that form the basis of Nevada's Regional Haze SIP and EPA's proposed approval. The EPA finds that the request is reasonable given the complexity of the Regional Haze Rule requirements and EPA's proposed approval of the technical analyses presented in Nevada's plan.

DATES: The comment period for the proposed rule published June 22, 2011 (76 FR 36450), is extended. Comments must be received on or before August 22, 2011.

ADDRESSES: Submit your comments, identified by Docket Number EPA–R09–OAR–2011–0130, by one of the following methods:

1. *Federal Rulemaking portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: Webb.Thomas@epa.gov.*
3. *Fax:* 415–947–3579 (Attention: Thomas Webb).
4. *Mail:* Thomas Webb, EPA Region 9, Planning Office, Air Division, 75 Hawthorne Street, San Francisco, California 94105.
5. *Hand Delivery or Courier:* Such deliveries are only accepted Monday through Friday, 8:30 a.m.–4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2011–0130. Our policy is that EPA will include all comments received in the public docket without change. EPA may make comments available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through *http://www.regulations.gov,* EPA will include your e-mail address as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available (*e.g.,* CBI or other information whose disclosure is restricted by statute). Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the Planning Office of the Air Division, Air-2, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. EPA requests you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 9 a.m.–5:30 p.m. PST, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Webb, U.S. EPA, Region 9, Planning Office, Air Division, Air-2, 75 Hawthorne Street, San Francisco, CA 94105. Thomas Webb can be reached at telephone number (415) 947–4139 and via electronic mail at *webb.thomas@epa.gov.*

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

Dated: July 12, 2011.

Thomas McCullough,

Acting Regional Administrator, Region 9.

[FR Doc. 2011–18568 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 5

Negotiated Rulemaking Committee on Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs)

AGENCY: Health Resources and Services Administration, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: The Negotiated Rulemaking (NR) Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas establishes criteria and a comprehensive methodology for designation of Medically Underserved Populations (MUPs) and Primary Care Health Professional Shortage Areas (HPSAs).

DATES: August 16, 2011, 1 p.m.–5 p.m.; August 17, 2011, 1 p.m.–5 p.m.

FOR FURTHER INFORMATION CONTACT: For more information, please contact Emily Cumberland, Office of Policy Coordination, Bureau of Health Professions, Health Resources and Services Administration, Room 9–49, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–4662, *E-mail: ecumberland@hrsa.gov*. Information can also be found at the following Web site: *http://www.hrsa.gov/advisory committees/shortage/*.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Negotiated Rulemaking Committee on Designation of Medically Underserved Populations (MUPs) and Health Professional Shortage Areas (HPSAs).

Dates and Times: August 16, 2011, 1 p.m.–5 p.m.; August 17, 2011, 1 p.m.–5 p.m.

Place: Webinar format.

Status: The meeting will be open to the public.

Purpose: The purpose of the Negotiated Rulemaking Committee on Designation of Medically Underserved Populations and Health Professional Shortage Areas is to establish criteria and a comprehensive methodology for designation of Medically Underserved Populations (MUPs) and Primary Care Health Professional Shortage Areas (HPSAs), using the NR process. It is hoped that use of the NR process will yield a consensus among technical experts and stakeholders on a new rule for designation of MUPs and Primary

Care HPSAs, which would be published as an Interim Final Rule in accordance with Section 5602 of the Affordable Care Act, Public Law 111–148.

Agenda: The meeting will include a discussion of various components of a possible methodology for identifying areas of shortage and underservice, based on the recommendations of the Committee in the previous meeting. The agenda will be available on the Committee's Web site (*http://www.hrsa.gov/advisorycommittees/shortage/*) one day prior to the meeting. Agenda items are subject to change as priorities dictate.

For members of the public interested in participating in the webinar, please contact Emily Cumberland by e-mail at *ecumberland@hrsa.gov*. Requests to attend can be made up to two days prior to the meeting. Participants will receive an e-mail response containing the link to the webinar. Requests to provide written comments should be sent to Emily Cumberland by e-mail at least 10 days prior to the first day of the meeting, August 16. Members of the public will have the opportunity to provide written comments before and after the meeting.

The Committee is working under tight timeframes to meet the reporting requirement in the Affordable Care Act. Due to the complexity of the issue, the Committee has been granted additional time to meet its final report deadline. As a result, meetings were added to the Committee schedule. The logistical challenges of expanding the meeting schedule hindered an earlier publication of this meeting notice.

Dated: July 19, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–18594 Filed 7–21–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1021]

Proposed Flood Elevation Determinations; Correction

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On November 24, 2008, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 73 FR 70944. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Lyon County, Kentucky, and Incorporated Areas. Specifically, it addresses the flooding sources Cumberland River (Lake Barkley) and Tennessee River (Kentucky Lake).

DATES: Comments are to be submitted on or before October 20, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1021, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 73 FR 70944, in the November 24, 2008, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Lyon County, Kentucky, and Incorporated Areas'' addressed the flooding sources Cumberland River (Lake Barkley) and Tennessee River (Kentucky Lake). That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for those flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lyon County, Kentucky, and Incorporated Areas				
Cumberland River (Lake Barkley).	At the Barkley Dam	None	+375	City of Eddyville, City of Kuttawa, Unincorporated Areas of Lyon County.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tennessee River (Kentucky Lake).	At the confluence with Hurricane Creek (southern county boundary).	None	+375	Unincorporated Areas of Lyon County.
	Approximately 500 feet downstream of the Barkley Canal.	None	+375	
	Approximately 3,200 feet upstream of the Duncan Creek confluence.	None	+375	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Eddyville

Maps are available for inspection at 200 Commerce Street, Eddyville, KY 42038.

City of Kuttawa

Maps are available for inspection at 90 Beech Street, Kuttawa, KY 42055.

Unincorporated Areas of Lyon County

Maps are available for inspection at 500A West Dale Avenue, Eddyville, KY 42038.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: April 21, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18598 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2008–0020; Internal Agency Docket No. FEMA–B–1120]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule; correction.

SUMMARY: On June 3, 2010, FEMA published in the **Federal Register** a proposed rule that contained an erroneous table. This notice provides corrections to that table, to be used in lieu of the information published at 75 FR 31342. The table provided here represents the flooding sources, location of referenced elevations, effective and modified elevations, and communities affected for Tazewell County, Illinois, and Incorporated Areas. Specifically, it addresses the flooding sources Bull Run Creek, Dempsey Creek, Farm Creek, Fond Du Lac Creek, Illinois River, Lick Creek, Mackinaw River, Prairie Creek, and School Creek.

DATES: Comments are to be submitted on or before October 20, 2011.

ADDRESSES: You may submit comments, identified by Docket No. FEMA–B–1120, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064 or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of Base (1% annual-chance) Flood Elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are minimum requirements. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Correction

In the proposed rule published at 75 FR 31342, in the June 3, 2010, issue of the **Federal Register**, FEMA published a table under the authority of 44 CFR 67.4. The table, entitled ''Tazewell County, Illinois, and Incorporated

Areas'' addressed the flooding sources Bull Run Creek, Dempsey Creek, Farm Creek, Fond Du Lac Creek, Illinois River, Lick Creek, Mackinaw River, Prairie Creek, and School Creek. That table contained inaccurate information as to the location of referenced elevation, effective and modified elevation in feet, and/or communities affected for those flooding sources. In this notice, FEMA is publishing a table containing the accurate information, to address these prior errors. The information provided below should be used in lieu of that previously published.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Tazewell County, Illinois, and Incorporated Areas				
Bull Run Creek	Approximately 900 feet upstream of the Prairie Creek confluence.	None	+655	Unincorporated Areas of Tazewell County, Village of Morton.
	At the upstream side of Idlewood Street extended	None	+680	
Dempsey Creek	Approximately 1.4 miles upstream of the Farm Creek confluence.	None	+541	Unincorporated Areas of Tazewell County.
	Approximately 2.56 miles upstream of the Farm Creek confluence.	None	+603	
Farm Creek	Approximately 770 feet upstream of the railroad bridge.	None	+740	Unincorporated Areas of Tazewell County.
	At the downstream side of Diebel Road	None	+742	
Fond Du Lac Creek	At the Farm Creek confluence	None	+492	City of East Peoria, Unincorporated Areas of Tazewell County.
	At the downstream side of East Washington Street (State Route 8).	None	+508	
Illinois River	At the upstream side of Mason Road extended	+455	+454	City of Pekin, Unincorporated Areas of Tazewell County.
	Approximately 1,950 feet upstream of State Route 9	+458	+457	
Lick Creek	Approximately 480 feet downstream of Parkway Drive	None	+472	City of Pekin.
	Approximately 680 feet upstream of Parkway Drive	None	+476	
Mackinaw River	Approximately 0.97 mile downstream of Dee Mac Road (County Highway 6).	None	+588	Village of Mackinaw.
	Approximately 0.78 mile downstream of Dee Mac Road (County Highway 6).	None	+591	
Prairie Creek	Approximately 0.49 mile downstream of the Bull Run Creek confluence.	None	+648	Unincorporated Areas of Tazewell County.
	Approximately 650 feet downstream of Farm Road	None	+657	
School Creek	At the Farm Creek confluence	None	+496	City of East Peoria, Unincorporated Areas of Tazewell County.
	Approximately 0.91 mile upstream of Gravel Pit Access Road.	None	+640	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of East Peoria

Maps are available for inspection at City Hall, 100 South Main Street, East Peoria, IL 61611.

City of Pekin

Maps are available for inspection at City Hall, 111 South Capitol Street, Pekin, IL 61554.

Unincorporated Areas of Tazewell County

Maps are available for inspection at the McKenzie Building, 11 South 4th Street, 4th Floor, Pekin, IL 61554.

Village of Mackinaw

Maps are available for inspection at the Village Hall, 100 East Fast Avenue, Mackinaw, IL 61755.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Village of Morton				
Maps are available for inspection at the Village Hall, 120 North Main Street, Morton, IL 61550.				

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: July 8, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18630 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1204]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before October 20, 2011.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1204, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4064, or (e-mail) *luis.rodriguez1@dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 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.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/country	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Highlands County, Florida					
Florida	Unincorporated Areas of Highlands County.	Arbuckle Creek	Approximately 1.3 miles downstream of U.S. Route 98.	+42	+41
			Approximately 1,100 feet upstream of Arbuckle Creek Road.	None	+53
Florida	Unincorporated Areas of Highlands County.	Carter Creek	At the Arbuckle Creek confluence	+54	+53
			Approximately 840 feet downstream of Hartt Road	+54	+53
Florida	Unincorporated Areas of Highlands County.	Platt Branch	Approximately 4.0 miles downstream of County Road 731.	None	+70
			Approximately 0.43 mile upstream of County Road 731	None	+88

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Highlands County

Maps are available for inspection at the Highlands county Administration Office, 600 South Commerce Avenue, Sebring, FL 33870.

Unincorporated Areas of Lewis and Clark County, Montana					
Montana	Unincorporated Areas of Lewis and Clark County.	Silver Creek	Approximately 200 feet downstream of I–15.	None	+3695
			Approximately 1,800 feet downstream of Applegate Drive	+3746	+3747
Montana	Unincorporated Areas of Lewis and Clark County.	Silver Creek Overflow (D2 Ditch).	Approximately 170 feet downstream of I–15 Frontage Road.	None	+3687
			Approximately 0.38 mile upstream of North Montana Avenue	None	+3712
Montana	Unincorporated Areas of Lewis and Clark County.	Silver Creek Overflow (Ryanns Lane).	Approximately 210 feet downstream of North Montana Avenue.	None	+3710
			Approximately 75 feet upstream of North Montana Avenue	None	+3713

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Lewis and Clark County

Maps are available for inspection at 221 Breckenridge Street, Helena, MT 59623.

Flooding source	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Lawrence County, Arkansas, and Incorporated Areas				
Turkey Creek	Approximately 1.2 miles downstream of Southwest Broad Street.	None	+261	Unincorporated Areas of Lawrence County.
	Approximately 0.5 mile downstream of Southwest Broad Street.	None	+263	
Village Creek	Approximately 1.2 miles downstream of West Free Street.	None	+262	City of Walnut Ridge, Unincorporated Areas of Lawrence County.
	Approximately 0.5 mile upstream of U.S. Route 67	None	+267	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Walnut Ridge

Maps are available for inspection at the Fire Department, 3227 U.S. Route 67B, Walnut Ridge, AR 72476.

Unincorporated Areas of Lawrence County

Maps are available for inspection at the Lawrence County Recorder's Office, 315 West Main Street, Room 12, Walnut Ridge, AR 72476.

Saline County, Arkansas, and Incorporated Areas				
Upper Depot Creek	Approximately 1,000 feet downstream of Sidell Road	None	+349	Unincorporated Areas of Saline County.
	At the upstream side of Sidell Road	None	+356	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Saline County

Maps are available for inspection at 200 North Main Street, Room 117, Benton, AR 72015.

Cobb County, Georgia, and Incorporated Areas				
Bishop Creek	At the Sope Creek confluence	+910	+905	Unincorporated Areas of Cobb County.
	At the downstream side of Indian Hills Trail Northeast	+910	+909	
Blackjack Creek.	At the Sope Creek confluence	+995	+990	City of Marietta.
	Approximately 250 feet upstream of the Sope Creek confluence.	+999	+998	
Campground Creek	At the Sope Creek confluence	+931	+927	Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Sope Creek confluence.	+931	+930	
Eastside Creek	At the Sope Creek confluence	+920	+915	Unincorporated Areas of Cobb County.
	Approximately 1,375 feet upstream of the Sope Creek confluence.	+920	+919	
Elizabeth Branch	At the Sope Creek confluence	+1000	+998	City of Marietta, Unincorporated Areas of Cobb County.

Flooding source	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 300 feet upstream of the Sope Creek confluence.	+1000	+999	
Piney Grove Creek	At the Sewell Mill Creek confluence	+948	+945	Unincorporated Areas of Cobb County.
	Approximately 50 feet upstream of the Sewell Mill Creek confluence.	+950	+949	
Robertson Creek	At the Sewell Mill Creek confluence	+923	+921	Unincorporated Areas of Cobb County.
	Approximately 725 feet upstream of the Sewell Mill Creek confluence.	+924	+923	
Sewell Mill Creek	At the Sope Creek confluence	+921	+915	Unincorporated Areas of Cobb County.
	Approximately 300 feet upstream of Karen Lane	+1084	+1083	
Sope Branch	At the Sope Creek confluence	+1023	+1021	City of Marietta.
	Approximately 550 feet upstream of the Sope Creek confluence.	+1023	+1022	
Sope Creek	Approximately 250 feet upstream of the Chattahoochee River confluence.	+803	+804	City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of Rigby Street	+1040	+1041	
Thompson Creek	At the Sewell Mill Creek confluence	+934	+933	Unincorporated Areas of Cobb County.
	Approximately 1,500 feet upstream of the Sewell Mill Creek confluence.	+934	+933	
Wildwood Branch	At the Sope Creek confluence	+985	+976	City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Sope Creek confluence.	+985	+984	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Marietta

Maps are available for inspection at the Public Works Department, 205 Lawrence Street, Marietta, GA 30060.

Unincorporated Areas of Cobb County

Maps are available for inspection at the Cobb County Development and Inspection Department, 205 Lawrence Street, Marietta, GA 30060.

St. Helena Parish, Louisiana, and Incorporated Areas

Tickfaw River	Approximately 1.48 miles downstream of State Route 16.	None	+110	Village of Montpelier.
	At the Twelvemile Creek confluence	None	+111	
Tributary of Tickfaw River	Approximately 1.14 miles upstream of the Tickfaw River confluence.	+114	+115	Unincorporated Areas of St. Helena Parish.
	Approximately 1.68 miles upstream of the Tickfaw River confluence.	+118	+119	
Twelvemile Creek	At the Tickfaw River confluence	None	+111	Village of Montpelier.
	At the upstream side of State Route 43	None	+112	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Flooding source	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of St. Helena Parish

Maps are available for inspection at the St. Helena Parish Police Jury Administration Building, 17911 Highway 43, Greensburg, LA 70441.

Village of Montpelier

Maps are available for inspection at the Montpelier Town Hall, 36400 Highway 16, Montpelier, LA 70422.

Coos County, Oregon, and Incorporated Areas

Pacific Ocean, near City of Bandon.	Approximately 370 feet southwest of the intersection of Madison Avenue Southwest and 6th Street Southwest.	+18	+16	City of Bandon, Unincorporated Areas of Coos County.
	Approximately 420 feet northwest of the intersection of Lincoln Avenue Southwest and 3rd Street Southwest (just south of the Coquille River South Jetty).	+20	+19	
	Approximately 260 feet west of the intersection of Gould Road and Beach Lane.	None	+32	
	Approximately 300 feet west of the intersection of Beach Loop Drive and Whale Watch Way.	+44	+36	
Pacific Ocean, near City of Coos Bay.	Approximately 1,950 feet northeast of the intersection of Bastendorf Beach Road and Cape Arago Highway (State Route 540).	+17	+13	Unincorporated Areas of Coos County.
	Approximately 880 feet northwest of the intersection of Cape Arago Highway (State Route 540) and Cottell Lane (at Sunset Bay State Park).	None	+17	
	Approximately 0.67 mile northwest of the intersection of Coos Head Road and Cape Arago Highway (State Route 540) (just south of Coos Bay South Jetty).	+16	+18	
	Approximately 800 feet northwest of the intersection of Cape Arago Highway (State Route 540) and Byren Road (at Yoakam Point State Natural Site).	+17	+36	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Bandon

Maps are available for inspection at 555 Highway 101, Bandon, OR 97411.

Unincorporated Areas of Coos County

Maps are available for inspection at 225 North Adams Street, Coquille, OR 97423.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: June 30, 2011.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–18633 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2011–0034; 92220–1113–0000; ABC Code: C3]

RIN 1018–AX79

Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of American Burying Beetle in Southwestern Missouri

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to reestablish the American burying beetle, a Federally listed endangered insect, into its historical habitat in Wah'kon-tah Prairie in southwestern Missouri. We propose to reestablish the American burying beetle under section 10(j) of the Endangered Species Act of 1973, as amended (Act), and to classify that reestablished population as a nonessential experimental population (NEP) within St. Clair, Cedar, Bates, and Vernon Counties, Missouri. This proposed rule provides a plan for establishing the NEP and provides for allowable legal incidental taking of the American burying beetle within the defined NEP area.

DATES: *Comments:* We will consider public comments that we receive on or before August 22, 2011.

Public meeting: We will hold a public meeting on August 11, 2011, from 6 to 8 p.m. in El Dorado Springs, Missouri (see **ADDRESSES**).

ADDRESSES: *Written Comments:* You may submit information by one of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments on Docket No. FWS–R3–ES–2011–0034.

U.S. mail or hand-delivery: Public Comments Processing, Attn: FWS–R3–ES–2010–0034; Division of Policy and Directives Management, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Suite 222, Arlington, VA 22203.

We will post all comments that we receive on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Comments section below for more details).

Copies of Documents: The proposed rule is available on *http://www.regulations.gov* and available from our Web site at *http://www.fws.gov/midwest/endangered.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Columbia, Missouri, Ecological Services Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203, telephone 573–234–2132. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

Public meeting: The public meeting will take place at El Dorado Springs Community Center, 135 W. Spring Street, El Dorado Springs, MO 64744.

Copies of Documents: The proposed rule is available on *http://www.regulations.gov* and available from our Web site at *http://www.fws.gov/midwest/endangered.* In addition, the supporting file for this proposed rule will be available for public inspection, by appointment, during normal business hours, at the Columbia, Missouri, Ecological Services Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203, telephone 573–234–2132. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Services (FIRS) at 800–877–8339.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Fish and Wildlife Biologist, at the Columbia, Missouri Ecological Services Office, 101 Park DeVille Dr., Suite B, Columbia, MO 65203, telephone 573–234–2132; facsimile 573–234–2181.

SUPPLEMENTARY INFORMATION:

Public Comments

We want any final rule resulting from this proposal to be as effective as possible. Therefore, we invite Tribal and governmental agencies, the scientific community, industry, and other interested parties to submit comments or recommendations concerning any aspect of this proposed rule. Comments should be as specific as possible.

To issue a final rule to implement this proposed action, we will take into consideration all comments and any additional information we receive. Such communications may lead to a final rule that differs from this proposal. All comments, including commenters' names and addresses, if provided to us, will become part of the supporting record.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Comments must be submitted to *http://www.regulations.gov* before 11:59 p.m. (Eastern Time) on the date specified in the **DATES** section. We will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov.* If you provide personal identifying information in your comment, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Columbia, Missouri Ecological Services Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Public Meeting

We will hold a public meeting from 6 to 8 p.m. on August 11, 2011, at the El Dorado Springs Community Center in El Dorado Springs, Missouri (see **ADDRESSES**). Persons needing reasonable accommodations in order to attend and participate in a public meeting should contact the Columbia, Missouri Ecological Services Office, at the address or phone number listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible. In order to allow sufficient time to process requests, please call no later than one week before the meeting. Information regarding this proposal is available in alternative formats upon request.

Background

Regulatory Background

The American burying beetle (*Nicrophorus americanus,* ABB) was listed as endangered throughout its range on July 13, 1989 (154 FR 29652), under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), without critical habitat (USFWS

2008, p. 2). The Act provides that species listed as endangered are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act, among other things, prohibits the take of endangered wildlife. ''Take'' is defined by the Act as harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve Federally listed species and protect designated critical habitat. It mandates that all Federal agencies use their existing authorities to further the purposes of the Act by carrying out programs for the conservation of listed species. It also states that Federal agencies must, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

Under section 10(j) of the Act, the Secretary of the Interior can designate reestablished populations outside the species' current range, but within its historical range, as ''experimental.'' With the experimental population designation, the relevant population is treated as threatened for purposes of section 9 of the Act, regardless of the species' designation elsewhere in its range. Threatened designation allows us discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt whatever regulations are necessary and advisable to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the 10(j) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species.

Based on the best scientific and commercial data available, we must determine whether the experimental population is essential or nonessential to the continued existence of the species. The regulations (50 CFR 17.80(b)) state that an experimental population is considered essential if its loss would be likely to appreciably reduce the likelihood of survival of that species in the wild. All other populations are considered nonessential. We have determined that this proposed experimental population would not be essential to the continued existence of the species in the wild. This determination has been made because, since the time the species was listed, wild populations of the ABB are now found in seven additional States, three of which are considered robust and suitable for donor populations (USFWS 2008, p. 14). Therefore, the Service is proposing to designate a nonessential experimental population (NEP) for the species in southwestern Missouri.

For the purposes of section 7 of the Act, we treat an NEP as a threatened species when the NEP is located within a National Wildlife Refuge or unit of the National Park Service, and Federal agency conservation requirements under section 7(a)(1) and the Federal agency consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to carry out programs for the conservation of listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park Service unit, then, for the purposes of section 7, we treat the population as proposed for listing and only section 7(a)(1) and section 7(a)(4) apply. In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are in the form of conservation recommendations that are optional as the agencies carry out, fund, or authorize activities. Because the NEP is, by definition, not essential to the continued existence of the species, the effects of proposed actions affecting the NEP will generally not rise to the level of jeopardizing the continued existence of the species. As a result, a formal conference will likely never be required for ABBs established within the NEP area. Nonetheless, some agencies voluntarily confer with the Service on actions that may affect a proposed species. Activities that are not carried out, funded, or authorized by Federal agencies are not subject to provisions or requirements in section 7.

American burying beetles used to establish an experimental population will come from a captive-rearing facility at the St. Louis Zoo, which propagates this species under the Federal Fish and Wildlife Permit #TE135297–0. The donor population for the Zoo is a wild population from Ft. Chaffee, Arkansas. Each spring, Ft. Chaffee Maneuver Training Center (MTC) will provide the St. Louis Zoo with up to 15 ABB pairs provided their removal is not likely to jeopardize the continued existence of the species, and appropriate permits are issued in accordance with our regulations (50 CFR 17.22) prior to their removal. If this proposal is adopted, we would ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of individuals from donor populations for release is not likely to jeopardize the continued existence of the species in the wild. ABBs will be transported to St. Louis Zoo staff to augment the St. Louis Zoo's captive population, or possibly for direct reintroduction to Wah'kon-tah Prairie. The purpose of the captive population is to provide stock for reintroductions in ''suitable areas'' within the species' historical range, in accordance with recovery action 7.2 of the American Burying Beetle Recovery Plan (USFWS 1991, p. 52).

We have not designated critical habitat for the ABB. Section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated for any experimental population that is determined to be nonessential. Accordingly, we cannot designate critical habitat in areas where we establish an NEP.

Biological Information

The ABB is the largest member of the family *Silphidae* in North America, and the largest among a guild of species that breed and rear their young on vertebrate carcasses. Because carrion is a scarce and ephemeral resource, ABBs must traverse large areas in search of it. By necessity, they are strong flyers capable of covering several miles overnight. The farthest recorded dispersal in a year for reintroduced ABBs is 3 miles (4.8km) (McKenna-Foster *et al.* 2007, p. 9). Data from the Nantucket reintroduction show that the farthest dispersal in one season was 3 miles (4.8 km) (McKenna-Foster *et al.* 2007, p. 9). Data from Nebraska indicate that the vast majority (92 percent) of ABB were recaptured within 0.6 miles (1 km) of their initial capture within the same season (Bedick *et al.* 1999, p. 176). After ABBs find an appropriate-sized carcass, a pair of beetles cooperatively buries and prepares the carcass by removing its fur or feathers and coating it with antibacterial secretions. These activities require soil excavation, consequently soils must be conducive for excavation

and plant roots systems must not hinder excavation. Reproductive habitat activities also require soil that is appropriately moist. Both parents may remain to feed the larva with regurgitated meat until they are capable of feeding themselves. After pupation, new adults emerge within 30–45 days. ABBs are generally considered univoltine (having one brood or generation per year) in the wild, with a life span of about 12 months. They are a habitat generalist with regards to vegetation, and will eat all classes of vertebrate carcasses (USFWS 2008, pp. 8, 11).

The ABB's historical range included 35 States and three Canadian provinces in the eastern temperate areas of North America (USFWS 1991, p. 4). At the time of listing, only two ABB populations were known, one on Block Island, Rhode Island, and one in Latimer County, Oklahoma. Subsequent monitoring in other States documented additional populations in Arkansas, Nebraska, Texas, South Dakota, and Kansas (USFWS 2008, p. 16). The population on Block Island is the only naturally occurring population east of the Mississippi River. The ABB also occurs in captive-breeding populations. Currently, captive populations are maintained at the Roger Williams Park Zoo in Providence, Rhode Island; St. Louis Zoo in St. Louis, Missouri; The Wilds in Ohio; and the Cincinnati Zoo in Cincinnati, Ohio.

The reasons for the decline of the ABB during the 1900s are still unknown. Many hypotheses for the decline have been suggested, such as the widespread use of dichloro-diphenyl-trichloroethane (DDT) and other pesticides, habitat loss and fragmentation, decrease in the availability of carrion, increased use of artificial lighting, an unidentified pathogen, increase in competition from vertebrate scavengers, and an increase in competition from other carrion insects (Sikes and Raithel 2002, pp. 104–109). Confounding most of these hypotheses is the historical and continued presence of other Nicrophorus species. The pattern of disappearance from the center of the population to the eastern and western edges of its range is also difficult to explain.

Predation is not believed to be an important mortality factor for the ABB, although interaction with fire ants, whether through competition or predation, is thought to adversely affect ABB populations. Disease is not known to be a factor in the decline of the ABB, but knowledge of diseases of insects is in its infancy (USFWS 2008, p. 31). Competition for carrion by scavengers is thought to be an important factor in the decline of ABB (Sikes and Raithel 2002, p. 111). Competition with ants, flies, and vertebrate scavengers, as well as other species of burying beetles, can be limiting factors for ABBs (Sikes and Raithel 2002, p. 111). Weather extremes, such as drought, wildfire, hurricanes, and ice storms may affect the viability of existing populations (USFWS 2008, p. 33).

Recovery Efforts

Restoring an endangered or threatened species to the point where it is recovered is a primary goal of our endangered species program. The ABB recovery plan was developed within 2 years of the listing of the species and reflects the best information available at that time. The recovery objectives of the 1991 plan are to (1) ''reduce the immediacy of the threat of extinction * * *'' and (2) ''improve its status so that it can be reclassified from endangered to threatened.'' The recovery plan did not include delisting criteria, however, criteria for the reclassification are:

(a) Three populations of *N. americanus* have been reestablished (or additional populations discovered) within each of four broad geographical areas of its historical range: The Northeast, the Southeast, the Midwest, and the Great Lakes States;

(b) Each population contains a minimum of 500 adults as estimated by capture rates per trap night and black lighting effort; and

(c) Each population is demonstrably self-sustaining for at least 5 consecutive years (or is sustainable with established long-term management programs) (USFWS 1991, pp. 31–32).

The 1991 Recovery Plan considers conducting additional reintroductions a top priority (Priority 1) (USFWS 1991, p. 63). The first reintroduction site for the ABB was Penikese Island, Massachusetts, in 1990. After ABBs were released on Penikese for 4 years, the population persisted there for about 8 years (until 2002). No ABBs were subsequently found there during modest trapping efforts from 2003 to 2006. Nantucket Island was the next ABB reintroduction site, which was initiated in 1994. Release of ABBs ended in 2006, and the population has persisted. Since 1998, there have been sporadic efforts to reintroduce a population in Ohio, but ABBs have yet to be recaptured after overwintering (USFWS 2008, p. 5).

Reestablishment Area

Historically, the ABB was recorded in 13 counties throughout Missouri, and was most likely found throughout the State. The last documented ABB occurrence in the State was collected in a light-trap from Newton County (southwest Missouri) in the mid 1970s (Simpson 1991, p. 1). Monitoring for existing ABB populations has been ongoing in Missouri since 1991. A concerted monitoring effort has been conducted by the St. Louis Zoo since 2002, and monitoring began on Wah'kon-tah Prairie in 2004. During the period 2002–2009, researchers monitored 49 sites from 25 counties in Missouri for ABB (Merz 2009, p. 8). No ABBs were observed or collected in any of the sites surveyed in Missouri since the 1970s.

The proposed reintroduction site, Wah'kon-tah Prairie, is a 3,030-acre (1,226-hectares) site jointly owned and managed by the Missouri Department of Conservation (MDC) and The Nature Conservancy (TNC). It is a designated special focus area, where TNC is working to restore a greater prairie chicken (*Tympanuchus cupido*) population and native tallgrass prairie. Wah'kon-tah Prairie straddles the border of St. Clair and Cedar Counties, and is very close to Bates and Vernon Counties, all within southwestern Missouri. The area within these four counties, 2,885 square miles (7,472 square kilometers (km)), is the proposed area for the nonessential experimental population (NEP). The minimum distance from the reintroduction site to outside of the designated experimental population boundary is 17 miles (27 km); the greatest distance is 52 miles (84 km). This NEP area was selected because of the proximity to the last recorded ABB sighting in Missouri, the quantity of recent ABB monitoring, and the relative abundance of carrion (Hamilton and Merz 2010, pp. 4–5).

According to the St. Louis Zoo's American Burying Beetle Activity Summary in 2009, 12 sites within the proposed NEP area were monitored for carrion beetles (Jean *et. al.* 2009, p. 1). Five of these sites were on Wah'Kon-Tah Prairie, one of which was sampled for 66 days throughout the season. The pitfall traps within the proposed NEP area collected 46,522 individuals: Of which 86 percent were other species of the beetle family Silphidae (to which the ABB belongs); the remainder were other insects and spiders. No ABBs were found (Jean *et. al.* 2009, p. 1).

Section 10(j) of the Act requires that an experimental population be wholly separate geographically from other wild populations of the same species. Because there are no known populations of ABB in Missouri, and there are no records of ABB in the bordering

counties of eastern Kansas, this proposed NEP is geographically separate from all other known ABB populations. Based on the movement data of other ABB populations, we do not believe the reintroduced ABBs will move beyond the designated NEP area. If monitoring shows that the reintroduced ABB are moving toward a border of the NEP, we will seek to amend the NEP boundaries, after monitoring the possible new NEP areas.

Release Procedures

Captive-bred beetles from St. Louis Zoo, wild beetles from Ft. Chaffee, or both will be brought to the release site in late spring by representatives of the St. Louis Zoo or the Service. ABBs will be paired 24 hours in advance of release. These beetles will be marked by clipping the elytra (the modified forewings that encase the thin hind wings used in flight) to distinguish between captive-bred and wild beetles, and between the release transects. For the release, a soil plug is dug and removed, and paired ABBs are provisioned with a 120–200 gram (4–7 ounce) carcass and placed into the hole. The soil plug is then placed back over the hole and a wire screen stapled over the area to keep out scavenging animals and birds. These holes will be dug in several lines, or transects. The number of transects will be determined by the number of beetles available, and apportioned in equal numbers (Hamilton and Merz 2010, p. 7). The ABB Reintroduction Plan contains additional information on the release procedures and monitoring protocols (see **FOR FURTHER INFORMATION CONTACT** for copies of this document or go to *http://www.regulations.gov* at Docket No. FWS–R3–ES–2011–03034).

Status of Proposed Population

If this proposal is adopted, we would ensure, through our section 10 permitting authority and the section 7 consultation process, that the use of ABBs from the donor population at Ft. Chaffee, Arkansas, for releases into Wah'kon-tah Prairie is not likely to jeopardize the continued existence of the species in the wild. These donor populations are closely monitored by the Service, and over-collection would not be permitted. Establishing additional ABB populations within the species' historical range is an important step in recovery (USFWS 1991, p. 52).

The special rule that accompanies this section 10(j) rule is designed to broadly exempt from the section 9 take prohibitions any take of ABBs that is accidental and incidental to otherwise lawful activities. We provide this exemption because we believe that such incidental take of members of the NEP associated with otherwise lawful activities is necessary and advisable for the conservation of the species, as activities that currently occur or are anticipated in the NEP area, such as haying, grazing, and occasional burning of pastures, are generally compatible with ABB recovery.

This designation is justified because no adverse effects to extant wild or captive ABB populations will result from release of progeny from the captive flock. We also expect that the reintroduction effort into Missouri will result in the successful establishment of a self-sustaining population, which will contribute to the recovery of the species.

Management

Management issues related to the ABB NEP that have been considered include:

(a) *Mortality:* The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity (50 CFR 17.3), such as agricultural activities and other rural development, and other activities that are in accordance with Federal, Tribal, State, and local laws and regulations. If this 10(j) rule is finalized, incidental take of the ABB within the NEP area would not be prohibited, provided that the take is unintentional and is in accordance with the special rule that is a part of this 10(j) rule. However, if there is evidence of intentional take of an ABB within the NEP that is not authorized by the special rule, we would refer the matter to the appropriate law enforcement entities for investigation.

(b) *Special handling:* In accordance with 50 CFR 17.21(c)(3), any employee or agent of the Service, any other Federal land management agency, or State personnel, designated for such purposes, may in the course of their official duties, handle ABBs to aid sick or injured ABBs, or to salvage dead ABBs. However, non-Service personnel and their agents would need to acquire permits from the Service for these activities.

(c) *Coordination with landowners and land managers:* Through informal meetings, the Service and cooperators have identified issues and concerns associated with the proposed ABB population establishment. The proposed population establishment was discussed with potentially affected State agencies and private landowners. Affected State agencies, landowners, and land managers have either indicated support for, or no opposition to, the proposed population establishment, provided an NEP is designated and a special rule is promulgated to exempt incidental take from the section 9 take prohibitions.

(d) *Monitoring:* If this proposal is finalized and the reintroduction takes place, we would implement several monitoring strategies. Surveys conducted prior to releasing the ABBs will assess the over-wintering population from the prior year's release. During reintroduction, carcasses will be exhumed 10–12 days after burial to determine breeding success and the number of third instar (a developmental stage in insects representing their third molt) larvae present. This should provide a close estimate of the number of offspring produced in that first generation.

During the period from June through August, each reintroduction site will be surveyed for at least three nights in duration. In addition to sampling at the release site(s), surrounding areas will be sampled in four directions, approximately 1 mile (1.6 km) away, for at least three consecutive nights. Monitoring at the release sites and 1 mile (1.6 km) distant should detect the majority of the released beetles. Monitoring using pitfall trap surveys in the subsequent early summer and fall following release will provide an estimate of breeding pair productivity by collecting young adults following emergence. This will also allow for an estimate of overwinter survival of progeny. Beetles captured in the late summer and fall will be paired, provisioned with a carcass, and held until all pairs can be reintroduced back to the original release sites. We intend to reintroduce at least 50 pair each year for 5 years, or until data suggest a viable population of more than 1,000 individuals has been established. At year five, the cooperators will evaluate the project's successes and failures and make adjustments to the ABB reintroduction project, if necessary.

(e) *Public awareness and cooperation:* Public outreach for the ABB reintroduction project will be conducted in the spring of 2011, concurrent with the public comment period for the proposed rule. The State conservation department has conducted preliminary discussions with landowners in the NEP area, and the majority of the responses were positive. As part of the proposal process, we plan to conduct a public meeting in El Dorado Springs, Missouri, which is close to the reintroduction site. Additionally, we will distribute press releases to local media, announce the meeting and proposed rule in local newspapers, and post information on the Service's Web site (*http://www.fws.gov/midwest/endangered*) and

a Web site hosted by the St. Louis Zoo (*http://www.stlzoo.org/wildcareinstitute/centerforamericanburyingbe/americanburyingbeetlerecov.htm*).

Fact sheets on the species and the proposed project were distributed to the local conservation department office and to some of the landowners neighboring the NEP area. Those materials will be distributed more widely upon publication of this proposal.

Peer Review

In accordance with our policy on peer review, published on July 1, 1994 (59 FR 34270), we will provide copies of this proposed rule to three or more appropriate and independent specialists in order to solicit comments on the scientific data and assumptions relating to the supportive biological and ecological information for this proposed NEP designation. The purpose of such review is to ensure that the proposed NEP designation is based on the best scientific information available. We will invite these peer reviewers to comment during the public comment period and will consider their comments and information on this proposed rule during preparation of a final determination.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this proposed rule is not significant and has not reviewed this proposed rule under Executive Order 12866 (E.O. 12866). OMB bases its determination on the following four criteria:

(a) Whether the proposed rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the proposed rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the proposed rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the proposed rule raises novel legal or policy issues.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996; 5 U.S.C. 601 *et seq.*), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare, and make available for public comment, a regulatory flexibility analysis that describes the effect of the rule on small entities (small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We are certifying that this rule will not have a significant economic effect on a substantial number of small entities. The following discussion explains our rationale.

The area that would be affected if this proposed rule is adopted includes the release areas at Wah'kon-tah Prairie and adjacent areas into which ABBs may disperse, which over time could include significant portions of the NEP. Because of the regulatory flexibility for Federal agency actions provided by the NEP designation and the exemption for incidental take in the special rule, we do not expect this rule to have significant effects on any activities within Federal, State, or private lands within the NEP. In regard to section 7(a)(2), the population is treated as proposed for listing, and Federal action agencies are not required to consult on their activities. Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a proposed species. However, because the NEP is, by definition, not essential to the survival of the species, conferring will likely never be required for the ABB populations within the NEP area. Furthermore, the results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities. In addition, section 7(a)(1) requires Federal agencies to use their authorities to carry out programs to further the conservation of listed species, which would apply on any lands within the NEP area. As a result, and in accordance with these regulations, some modifications to proposed Federal actions within the NEP area may occur to benefit the ABB, but we do not expect projects to be halted or substantially modified as a result of these regulations.

If adopted, this proposal would broadly authorize incidental take of the ABB within the NEP area. The regulations implementing the Act define ''incidental take'' as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity such as, agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities in the NEP area that are in accordance with Federal, Tribal, State, and local laws and regulations. Intentional take for purposes other than authorized data collection or recovery purposes would not be permitted. Intentional take for research or recovery purposes would require a section 10(a)(1)(A) recovery permit under the Act.

The principal activities on private property near the NEP area are agriculture, rural development, and recreation. We believe the presence of the ABB would not affect the use of lands for these purposes because there would be no new or additional economic or regulatory restrictions imposed upon States, non-Federal entities, or members of the public due to the presence of the ABB, and Federal agencies would only have to comply with sections 7(a)(1) and 7(a)(4) of the Act in these areas. Therefore, this rulemaking is not expected to have any significant adverse impacts to activities on private lands within the NEP area.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) If adopted, this proposal will not ''significantly or uniquely'' affect small governments. We have determined and certify under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. A Small Government Agency Plan is not required. As explained above, small governments would not be affected because the proposed NEP designation will not place additional requirements on any city, county, or other local municipalities.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year (*i.e.,* it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act). This proposed NEP designation for the ABB would not impose any additional management or protection requirements on the States or other entities.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the proposed rule does not have significant takings implications. When populations of Federally listed species are designated as NEPs, the Act's regulatory requirements regarding those populations are significantly reduced. This reduction of regulatory burden allows landowners to continue using their lands in ways that may adversely impact the ABB, but are otherwise lawful. For example, this proposed rule would not prohibit the taking of ABBs in the NEP area when such take is incidental to an otherwise legal activity, such as agricultural activities and other rural development, camping, hiking, hunting, vehicle use of roads and highways, and other activities that are in accordance with Federal, State, Tribal, and local laws and regulations. Because of the substantial regulatory relief provided by the NEP designations, we do not believe the reestablishment of this species will conflict with existing or proposed human activities or hinder public use of lands within the NEP.

A takings implication assessment is not required because this rule (1) Will not effectively compel a property owner to suffer a physical invasion of property and (2) will not deny all economically beneficial or productive use of the land or aquatic resources. This rule would substantially advance a legitimate government interest (conservation and recovery of a listed species) and would not present a barrier to all reasonable and expected beneficial use of private property.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, we have considered whether this proposed rule has significant Federalism effects and have determined that a Federalism assessment is not required. This rule would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed rule with the affected resource agencies in Missouri. Achieving the recovery goals for this species would contribute to its eventual delisting and its return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments would not change; and fiscal capacity would not be substantially directly affected. The special rule operates to maintain the existing relationship between the State and the Federal Government and is being undertaken in coordination with the State of Missouri. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment under the provisions of Executive Order 13132.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and would meet the requirements of sections (3)(a) and (3)(b)(2) of the Order.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands affected by this rule.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This proposed rule does not contain any new information collections that require approval. OMB has approved our collection of information associated with reporting the taking of experimental populations (50 CFR 17.84) and assigned control number 1018–0095. We may not collect or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The reintroduction of native species into suitable habitat within their historical or established range is categorically excluded from NEPA documentation requirements consistent with 40 CFR 1508.4, 516 DM 2.3A, 516 DM 2 Appendix 1, and 516 DM 8 Appendix 1.4.

Energy Supply, Distribution or Use (E.O. 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Because this action is not a significant energy action, no Statement of Energy Effects is required.

Clarity of This Regulation (E.O. 12866)

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comment should be as specific as possible. For example, you should tell us the numbers of the sections and paragraphs that are unclearly written, which sections or sentences are too long, or the sections where you feel lists and tables would be useful.

References Cited

A complete list of all references cited in this proposed rule is available at *http://www.regulations.gov* at Docket No. FWS–R3–ES–2011–0034.

Authors

The primary authors of this proposed rule are staff members of the Service's Columbia, Missouri, Ecological Services Field Office (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for ''Beetle, American Burying'' under ''INSECTS'' in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
INSECTS							
Beetle, American Burying.	*Nicrophorus americanus*.	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	Entire, except where listed as an experimental population.	E	351	.....	NA
Beetle, American Burying.	*Nicrophorus americanus*.	U.S.A. (eastern States south to FL, west to SD and TX), eastern Canada.	In southwestern Missouri, the counties of Cedar, St. Clair, Bates, and Vernon.	XN	.....	NA	17.85(c)
*	*	*	*	*	*		*

3. Amend § 17.85 by adding paragraph (c) to read as follows:

§ 17.85 Special rules—invertebrates.

* * * * *

(c) American Burying Beetle (*Nicrophorus americanus*).

(1) *Where is the American burying beetle designated as a nonessential experimental population (NEP)?*

(i) The NEP area for the American burying beetle is within the species' historical range and is defined as follows: the Missouri Counties of Cedar, St. Clair, Bates, and Vernon.

(ii) The American burying beetle is not known to currently exist in Cedar, St. Clair, Bates, or Vernon Counties in Missouri. Based on its habitat requirements and movement patterns, we do not expect this species to become established outside this NEP area. However, if individuals of this population move outside the designated NEP area, we would presume that they came from the reintroduced population. We would then amend this regulation to enlarge the boundaries of the NEP area to include the entire range of the expanded population.

(iii) We will not change the NEP designations to ''essential experimental,'' ''threatened,'' or ''endangered'' within the NEP area without a public rulemaking. Additionally, we will not designate critical habitat for this NEP, as provided by 16 U.S.C. 1539(j)(2)(C)(ii).

(2) *What activities are not allowed in the NEP area?*

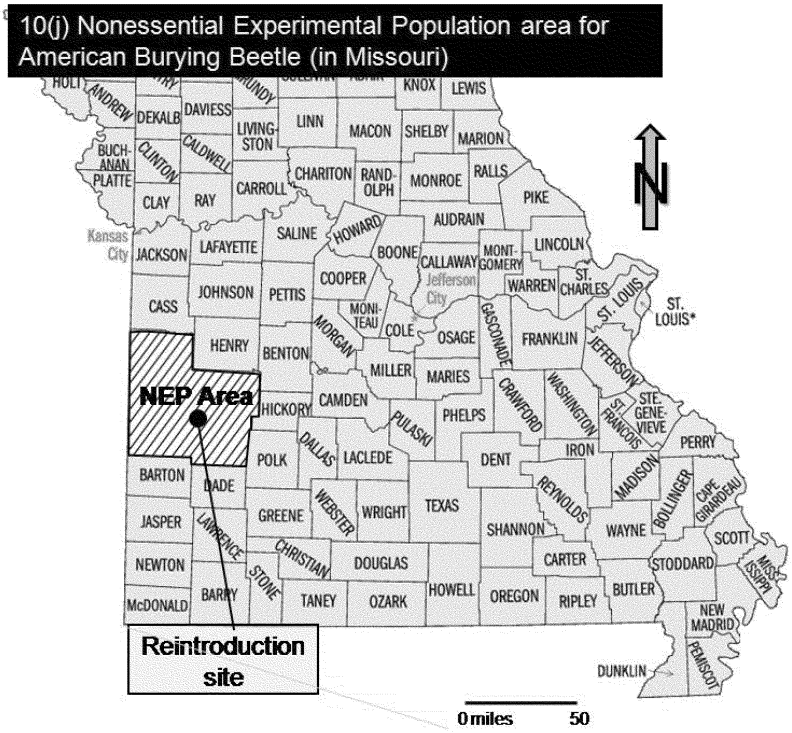
(i) You may not possess, sell, deliver, carry, transport, ship, import, or export by any means, American burying beetles, or parts thereof, that are taken or possessed in violation of paragraph (c)(3) of this section or in violation of the applicable State fish and wildlife laws or regulations or the Act.

(ii) You may not attempt to commit, solicit another to commit, or cause to be committed any offense defined in paragraph (c)(2)(i) of this section.

(3) *What take is allowed in the NEP area?* Take of this species that is accidental and incidental to an otherwise legal activity, such as agriculture, forestry and wildlife management, land development, recreation, and other activities, is allowed.

(4) *How will the effectiveness of these reintroductions be monitored?* We will prepare periodic progress reports and fully evaluate these reintroduction efforts after 5 years to determine whether to continue or terminate the reintroduction efforts.

(5) **Note:** Map of the NEP area for the American burying beetle follows:



* * * * *

Dated: July 11, 2011.

Gregory E. Siekaniec,

Acting Director, Fish and Wildlife Service.

[FR Doc. 2011–18561 Filed 7–21–11; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 76, No. 141
Friday, July 22, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–932]

Certain Steel Threaded Rod From the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Toni Dach or Steven Hampton, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1655 or (202) 482–0116, respectively.

Background

On May 9, 2011, the Department of Commerce (''Department'') published in the **Federal Register** the *Preliminary Results* of the administrative review of certain steel threaded rod from the People's Republic of China (''PRC''), covering the period October 8, 2008–March 31, 2010. *See Certain Steel Threaded Rod From the People's Republic of China: Preliminary Results of the First Administrative Review and Preliminary Rescission, in Part,* 75 FR 26696 (May 9, 2011).

Extension of Time Limit for the Final Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to issue the final results of an administrative review within 120 days after the date on which the preliminary results have been published. If it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend this deadline to a maximum of 180 days. The current deadline for the completion of the final results of this review is September 6, 2011.

The Department has determined that completion of the final results of this review by the current deadline is not practicable. The Department requires more time to analyze a significant amount of complex information, including information pertaining to the labor wage rate surrogate value. Therefore, given the number and complexity of issues in this case, and in accordance with section 751(a)(3)(A) of the Act, we are extending the time period for issuing the final results of review by 55 days to October 31, 2011.

This notice is published pursuant to sections 751(a)(3)(A) and 777(i)(1) of the Act and 19 CFR 351.213(h)(2).

Dated: July 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–18575 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–930]

Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 31, 2011, the Department of Commerce (''Department'') published the *Preliminary Results* of the first administrative review of the antidumping duty order on circular welded austenitic stainless pressure pipe from the People's Republic of China (''PRC'').[1] In the *Preliminary Results,* the Department determined a *de minimis* weighted-average margin for the sole respondent during the period of review (''POR''). The Department gave interested parties an opportunity to comment on the *Preliminary Results.* After considering interested parties' comments, the Department has made no changes to the *Preliminary Results.* Therefore, the Department continues to find that sales have not been made below normal value (''NV'') by the respondent in the final results of this administrative review. The final *de minimis* weighted-average margin is listed below in the ''Final Results of the Review'' section of this notice. The POR is September 5, 2008 through February 28, 2010.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Magd Zalok or Brandon Farlander, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0182, respectively.

Case History

On March 31, 2011, the Department published the *Preliminary Results* of this administrative review. On May 2, 2011, the Department received a case brief from domestic interested parties,[2] and, on May 9, 2011, the Department received a rebuttal brief from Zhejiang Jiuli Hi-Tech Metals Co., Ltd. (''Jiuli TC'') and Huzhou Jiuli Welded Stainless Steel Pipe Co., Ltd. (''Jiuli SD Co.''), the collapsed respondent in this administrative review.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties are addressed in the ''Circular Welded Austenitic Stainless Pressure Pipe from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the First Antidumping Duty Administrative Review,'' dated concurrently with this notice (''I&D Memorandum''), which is hereby adopted by this notice. A list of the issues which parties raised, and to which the Department has responded in the I&D Memorandum, is attached to this notice as an Appendix. The I&D Memorandum is a public document and is on file in the Central Records Unit (''CRU''), Main Commerce Building,

[1] *See Circular Welded Austenitic Stainless Pressure Pipe From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 17819 (March 31, 2011) (''*Preliminary Results*'').

[2] Specifically, Bristol Metals LLC, Felker Brothers Corporation, Marcegaglia U.S.A. Inc., and Outokumpu Stainless Products.

Room 7046, and is accessible on the Department's Web site at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

As indicated above, the Department made no changes to the *Preliminary Results* margin calculation in the final results of this administrative review. For further details on the issues raised by interested parties and the Department's positions on such issues, please see the I&D Memorandum.

Scope of the Order

The merchandise covered by the order is circular welded austenitic stainless pressure pipe not greater than 14 inches in outside diameter. This merchandise includes, but is not limited to, the American Society for Testing and Materials (''ASTM'') A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. ASTM A–358 products are only included when they are produced to meet ASTM A–312 or ASTM A–778 specifications, or comparable domestic or foreign specifications. Excluded from the scope are: (1) Welded stainless mechanical tubing, meeting ASTM A–554 or comparable domestic or foreign specifications; (2) boiler, heat exchanger, superheater, refining furnace, feedwater heater, and condenser tubing, meeting ASTM A–249, ASTM A–688 or comparable domestic or foreign specifications; and (3) specialized tubing, meeting ASTM A–269, ASTM A–270 or comparable domestic or foreign specifications.

The subject imports are normally classified in subheadings 7306.40.5005; 7306.40.5040; 7306.40.5062; 7306.40.5064; and 7306.40.5085 of the Harmonized Tariff Schedule of the United States (''HTSUS''). They may also enter under HTSUS subheadings 7306.40.1010; 7306.40.1015; 7306.40.5042; 7306.40.5044; 7306.40.5080; and 7306.40.5090. The HTSUS subheadings are provided for convenience and customs purposes only, the written description of the scope of the order is dispositive.

Affiliation and Collapsing

In the *Preliminary Results,* the Department found that Jiuli TC and Jiuli SD Co. are affiliated pursuant to section 771(33)(E) of the Tariff Act of 1930 (as amended) (the ''Act''). Additionally, pursuant to 19 CFR 351.401(f)(1) and (2), the Department found that the totality of the record evidence supported collapsing Jiuli TC and Jiuli SD Co. into a single entity. Accordingly, the Department based its margin calculation on record information pertaining to Jiuli TC and Jiuli SD Co. For further discussion on the Department's preliminary decision to collapse Jiuli TC with Jiuli SD Co., *see* Memorandum to Abdelali Elouaradia, Office Director, ''Whether to Collapse Zhejiang Jiuli Hi-Tech Metals Co., Ltd. and Huzhou Jiuli Welded Stainless Steel Pipe Co., Ltd.'', dated March 25, 2011. Since the *Preliminary Results,* the Department received no comments regarding its finding that Jiuli TC and Jiuli SD Co. are a single entity. Accordingly, the Department has continued to treat these two affiliated companies as a single entity for purposes of the final results of this administrative review.

Non-Market Economy Treatment

The Department considers the PRC to be a non-market economy (''NME'') country.[3] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. No party has challenged the designation of the PRC as an NME country in this review. Therefore, the Department continues to treat the PRC as an NME country for purposes of the final results of this administrative review.

Surrogate Country

In the *Preliminary Results,* the Department selected India as the primary surrogate country for the following reasons: (1) It is a significant producer of comparable merchandise; (2) it is at a level of economic development similar to that of the PRC pursuant to section 773(c)(4) of the Act; and (3) the Department has reliable data from India that it can use to value the factors of production. No party submitted comments challenging the Department's selection of the primary surrogate country. Hence, the Department is continuing to use India as the primary surrogate country for the final results of this administrative review.

Separate Rates

In proceedings involving NME countries, the Department holds a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assessed a single antidumping duty rate. It is the Department's policy to assign all exporters of subject merchandise in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.[4] Based on the evidence placed on the record of this administrative review, the Department preliminarily found that Jiuli TC/Jiuli SD Co. met the criteria for separate rate status. *See* the *Preliminary Results.* Since the *Preliminary Results,* the Department received no comments challenging its finding that Jiuli TC/Jiuli SD Co. met the criteria for separate rate status. Accordingly, the Department continues to find that Jiuli TC/Jiuli SD Co. meets the criteria for separate rate status for purposes of the final results of this administrative review.

Final Results of the Review

The weighted-average dumping margin for the POR is as follows:

Exporter	Weighted average margin (percent)
Zhejiang Jiuli Hi-Tech Metals Co., Ltd./Huzhou Jiuli Welded Stainless Steel Pipe Co., Ltd	0.01

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries[5] of subject merchandise in accordance with the final results of this review. Pursuant to 19 CFR 351.212(b)(1), the Department will calculate importer-specific (or customer-specific) *ad valorem* duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In accordance with 19 CFR 351.106(c)(2), the Department will

[3] *See, e.g., Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 30758, 30760 (June 4, 2007), unchanged in *Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the People's Republic of China,* 72 FR 60632 (October 25, 2007).

[4] *See Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China,* 56 FR 20588 (May 6, 1991), as further developed in *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China,* 59 FR 22585 (May 2, 1994).

[5] Appropriate entries would not include entries during the gap period. The gap period represents the period of time after the expiration of the 180-day provisional measures period during the original investigation, to the day prior to the U.S. International Trade Commission's final determination. In the instant case, the gap period is March 4, 2009, to March 16, 2009.

instruct CBP to liquidate, without regard to antidumping duties, all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis.* The Department intends to issue assessment instructions to CBP 15 days after the date of publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the exporter listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis, i.e.,* less than 0.5 percent, no cash deposit will be required for that company); (2) for previously investigated or reviewed PRC and non-PRC exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recent period; (3) for all PRC exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the PRC-wide rate of 55.21 percent; and (4) for all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporters that supplied that non-PRC exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Disclosure

The Department will disclose the calculations performed in these final results within five days of the date of public announcement of the final results to parties in this proceeding in accordance with 19 CFR 351.224(b).

The Department is issuing and publishing this administrative review and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: July 14, 2011.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

Appendix I—Issues & Decision Memorandum

Issues

Comment 1: The Reported Input Quantity of Steel.

Comment 2: The Reported Scrap Offset.

[FR Doc. 2011–18570 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 110620345–1331–02]

Request for Information on How To Structure Proposed New Program: Advanced Manufacturing Technology Consortia (AMTech)

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to provide input on how to best structure a new public-private partnership program, the Advanced Manufacturing Technology Consortia (AMTech) program, proposed in the NIST fiscal year (FY) 2012 budget (*see http://www.osec.doc.gov/bmi/budget/12CJ/2012_NIST_&_NTIS_Cong_Budget.pdf* pp. NIST–250 to NIST–254) for a copy of the AMTech budget justification). As envisioned, the AMTech program will provide Federal financial assistance to leverage existing or newly created industry-led consortia to develop precompetitive enabling manufacturing technologies. These consortia would develop roadmaps of critical long-term industrial manufacturing research needs, and issue subawards to fund research by universities, government laboratories, and U.S. businesses. This initiative will support research and development (R&D) in advanced manufacturing, with the goal of strengthening long-term U.S. leadership in the development of critical technologies that lead to sustainable economic growth and job creation.

DATES: Comments are due on or before 11:59 p.m. Eastern Time on September 20, 2011.

ADDRESSES: Comments will be accepted by e-mail only. Comments must be sent to *AMTechRFC@nist.gov* with the subject line ''*AMTech Comments.*''

FOR FURTHER INFORMATION CONTACT: Barbara Lambis, 301–975–4447, *barbara.lambis@nist.gov,* or Michael D. Walsh, 301–975–5545, *michael.walsh@nist.gov.*

SUPPLEMENTARY INFORMATION:

U.S. R&D intensity is lagging that of other nations and the composition of industrial R&D has shifted toward short-term research. These trends leave industry's long-term needs unmet and ultimately undermine our Nation's competitiveness.

As part of the Administration's effort to address this problem, the AMTech program aims to support early stage technology development by incentivizing the formation of and providing resources to industry-led consortia that will support precompetitive and enabling technology development, and create the infrastructure necessary for more efficient transfer of technology.

By convening key players across the entire innovation lifecycle, AMTech consortia will work toward eliminating critical barriers to innovation, increasing the efficiency of domestic innovation efforts and collapsing the time scale to deliver new products and services based on scientific and technological advances. This strategy has the potential to drive economic growth, enhance competitiveness and spur the creation of jobs in high-value sectors of the U.S. economy.

The establishment of industry-led AMTech consortia is expected to create an R&D infrastructure for industry-government partnerships that span the innovation life cycle—from discovery to invention to commercialization. The R&D-efficiency dimensions of these consortia will help accelerate the transition of knowledge and technology among all of the partners and thereby

shorten critical R&D-cycle times. Each consortium will define and prioritize the precompetitive R&D gaps and needs that are most likely to accelerate the development and diffusion of new platform technologies with commercialization potential to industry. Where possible, consortia will utilize existing R&D roadmaps to guide the prioritization of R&D efforts. Where well-defined technology roadmaps are absent, it will be an initial mission of AMTech consortia to facilitate, coordinate, and develop appropriate mechanisms for strategic planning based on the input of the private sector and academia. It is expected that the development of well-defined and articulated industry-led research plans and priorities will provide academia and government partners with valuable insights into a research agenda most likely to achieve high rates of technological innovation.

The goals of AMTech include:

• Promoting collective efforts that enable the development of key technology platforms and technical infrastructures;

• Improving the management of research portfolios in response to industry long-run technology development needs;

• Providing an environment for maximizing the leverage of Federal investment through cost-sharing;

• Increasing industrial R&D investment in enabling technology platforms and infrastructure;

• Collapsing the time scale of technological innovation;

• Fostering a robust U.S. innovation system through broad participation by industry, the Federal government, universities, and state, local and tribal governments; and

• Expanding the domestic value-added from new technologies by encouraging supply-chain integration, thereby encouraging domestic investment in multiple industries that support these technologies.

AMTech expects to achieve these goals through:

1. Coordination and advance planning, by:

• Partnering with industry, academia, and government to develop a shared vision of an industry sector's research needs via a technology roadmap;

• Identifying shared technology challenges that are solved with precompetitive technologies; and

• Forming of industry-led consortia.

2. Research and knowledge transfer, by:

• Promoting technology and knowledge transfer by connecting research to industry needs as defined by the consortia;

• Funding precompetitive research directed at meeting industry needs for new technology platforms, derived from consortia roadmaps; and

• Using consortia mechanisms (*e.g.,* cross-company (horizontal) interactions) to facilitate transfer of precompetitive technology platforms.

3. Transition new technology to commercial products, by:

• Providing a framework (*e.g.,* an industry cluster model) that facilitates regional government and venture capital support, enabling a clear path to commercialization for the entire supply chain;

• Developing regional cluster synergies that encourage supply-chain formation and effective integration; and

• Enabling commercial technologies by removing production barriers identified by the consortia.

Request for Information: The objective of this request for information is to assist NIST in the development of the new AMTech program should NIST receive FY 2012 appropriated funds for this purpose. In this connection, the questions below are intended to assist in the formulation of comments, and should not be construed as a limitation on the number of comments that interested persons may submit or as a limitation on the issues that may be addressed in such comments. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. All comments will be made publicly available. NIST is specifically interested in receiving input pertaining to one or more of the following questions:

1. Should AMTech consortia focus on developments within a single existing or prospective industry, or should its focus be on broader system developments that must be supplied by multiple industries?

2. Who should be eligible to participate as a member of an AMTech consortium? For example, U.S. companies. *i.e.,* large, medium, and/or small; institutions of higher education; Federal agencies; state, local, and tribal governments; and non-profit organizations?

3. Should AMTech place restrictions on or limit consortium membership?

4. Who should be eligible to receive research funding from an AMTech consortium? For example, U.S. companies *i.e.,* large, medium, and/or small; institutions of higher education; Federal agencies; state, local, and tribal governments; and non-profit organizations?

5. What criteria should be used in evaluating proposals for AMTech funding?

6. What types of activities are suitable for consortia funding?

7. Should conditions be placed on research awards to ensure funded activities are directed toward assisting manufacturing in the U.S.?

8. What are ways to facilitate the involvement of small businesses in AMTech consortia?

9. What are best practices for facilitating the widest dissemination and adoption of knowledge and technology through consortia?

10. While it is expected that the research efforts of AMTech consortia (including participants from the Federal, academic, and private industry sectors) will take place largely at the pre-competitive stage in the development of technologies, the generation of intellectual property is possible, and even likely. What types of intellectual property arrangements would promote active engagement of industry in consortia that include the funding of university-based research and ensure that consortia efforts are realized by U.S. manufacturers?

11. Would planning grants provide sufficient incentive for industry to develop roadmaps and initiate the formation of consortia? If not, what other incentives should be considered?

12. Should each member of an AMTech consortium be required to provide cost sharing? If so, what percentage of cost sharing should be provided?

13. What criteria should be used in evaluating research proposals submitted to an AMTech consortium?

14. What management models are best suited for industry-led consortia?

15. Should the evaluation criteria include the assessment of leadership and managerial skills?

16. Should limitations be placed on the duration of consortia?

17. How should an AMTech consortium's performance and impact be evaluated? What are appropriate measures of success?

18. What are the problems of measuring real-time performance of individual research awards issued by an industry-led consortium? What are appropriate measures of success?

19. How should the NIST AMTech program be evaluated?

20. What are lessons learned from other successful and unsuccessful industry-led consortia?

21. How can AMTech do the most with available resources? Are there

approaches that will best leverage the Federal investment?

22. How should AMTech interact with other Federal programs or agencies?

23. What role can AMTech play in developing, leading, or leveraging consortia involving other Federal agencies?

Dated: July 19, 2011.

Patrick Gallagher,

Under Secretary of Commerce for Standards and Technology and Director.

[FR Doc. 2011–18580 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XX37

Endangered and Threatened Species; Recovery Plan for the Sei Whale

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The National Marine Fisheries Service (NMFS) announces the availability for public review of the draft Recovery Plan (Plan) for the sei whale (*Balaenoptera borealis*). NMFS is soliciting review and comment from the public and all interested parties on the Plan, and will consider all substantive comments received during the review period before submitting the Plan for final approval.

DATES: Comments on the draft Plan must be received by close of business on September 6, 2011.

ADDRESSES: You may submit comments, identified by [0648– XX37], by any of the following methods:

Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov.*

Mail: Angela Somma, National Marine Fisheries Service, Office of Protected Resources, Endangered Species Division, 1325 East-West Highway, Silver Spring, MD 20910.

Instructions: All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). You may submit attachments to electronic comments in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge (301–427–8437), e-mail *Shannon.Bettridge@noaa.gov* or Larissa Plants (301–427–8471), e-mail *Larissa.Plants@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Recovery plans describe actions beneficial to the conservation and recovery of species listed under the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 *et seq.*). Section 4(f)(1) of the ESA requires that recovery plans incorporate: (1) Objective, measurable criteria which, when met, would result in a determination that the species is no longer threatened or endangered; (2) site-specific management actions necessary to achieve the Plan's goals; and (3) estimates of the time required and costs to implement recovery actions. The ESA requires the development of recovery plans for each listed species unless such a plan would not promote its recovery.

The sei whale has been listed as ''endangered'' under the Endangered Species Act (ESA) since its passage in 1973. Sei whales are widely distributed in the world's oceans and most populations were reduced, some of them considerably, by extensive commercial whaling in the 1950s through the early 1970s. They were hunted by modern whalers primarily after the preferred larger (or more easily taken) baleen whale species had been seriously depleted, including the right (*Eubalaena spp.*), humpback (*Megaptera novaeangliae*), gray (*Eschrichtius robustus*), blue (*Balaenoptera musculus*), and fin (*Balaenoptera physalus*) whales. International protection for this species only began in the 1970s, but the taking of sei whales continued at relatively low levels by Icelandic and Japanese operations. Of the commercially exploited ''great whales,'' the sei whale is one of the least well studied, and the current status of most sei whale stocks is poorly known. Sei whales have a global distribution and can be found in the North Atlantic Ocean, North Pacific Ocean, and Southern Hemisphere. Currently, the population structure of sei whales has not been adequately defined.

Because the current status of sei whales is unknown, the primary purpose of the draft Recovery Plan is to provide a research strategy to obtain data necessary to estimate population abundance, trends, and structure and to identify factors that may be limiting sei whale recovery. The draft Recovery Plan incorporates an adaptive management strategy that divides recovery actions into three tiers. Tier I includes: (1) Continued international regulation of whaling; (2) determining population size, trends, and structure using opportunistic data collection in conjunction with passive acoustic monitoring, if determined to be feasible; and (3) continued stranding response and associated data collection. After ten years of conducting Tier I actions, NMFS expects to evaluate this approach to determine if the approach is providing sufficient demographic data to assess recovery (or if more efficient data collection methods become available). If the Tier I method proves to be sufficient, NMFS will continue Tier I data collection activities. If Tier I data collection methods are insufficient, NMFS will consider Tier II actions, building upon research conducted during Tier I. Tier II adds more extensive directed demographic survey research and actions that are dependent upon acquiring comprehensive information (*e.g.,* assessment of threats currently ranked as unknown). Tier III recovery actions depend upon data collected in Tiers I and/or II. When sufficient data are obtained, Tier III recovery activities will be undertaken as feasible. Costs have been estimated for Tier I recovery actions only.

Criteria for the reclassification of the sei whale are included in the final Recovery Plan. In summary, the sei whale may be reclassified from endangered to threatened when all of the following have been met: (1) Given current and projected threats and environmental conditions, the sei whale population in each ocean basin in which it occurs (Atlantic Ocean, Pacific Ocean, and Southern Hemisphere) satisfies the risk analysis standard for threatened status (has no more than a 1 percent chance of extinction in 100 years) *and* the global population has at least 1,500 mature, reproductive individuals (consisting of at least 250 mature females and at least 250 mature males in each ocean basin). Mature is defined as the number of individuals known, estimated, or inferred to be capable of reproduction. Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated

into a Population Viability Analysis will be carefully considered before downlisting takes place; and (2) none of the known threats to sei whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed: (A) The present or threatened destruction, modification or curtailment of a species' habitat or range; (B) overutilization for commercial, recreational or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors. The population will be considered for delisting if all of the following can be met: (1) Given current and projected threats and environmental conditions, the total sei whale population in each ocean basin in which it occurs (Atlantic Ocean, Pacific Ocean, and Southern Hemisphere) satisfies the risk analysis standard for unlisted status (has less than a 10 percent probability of becoming endangered (has more than a 1 percent chance of extinction in 100 years) in 20 years). Any factors or circumstances that are thought to substantially contribute to a real risk of extinction that cannot be incorporated into a Population Viability Analysis will be carefully considered before delisting takes place; and (2) none of the known threats to sei whales are known to limit the continued growth of populations. Specifically, the factors in 4(a)(l) of the ESA are being or have been addressed.

The time and cost to recovery is not predictable with the current information and global listing of sei whales. The difficulty in gathering data on sei whales and uncertainty about the success of passive acoustic monitoring in fulfilling data needs make it impossible to give a timeframe to recovery. While we are comfortable estimating costs for the first 10 years of plan implementation for Tier I actions ($11.872 million), any projections beyond this date are likely to be imprecise and unrealistic until we can determine the success of passive acoustic monitoring of sei whales to obtain demographic data. The anticipated date for removal from the endangered species list also cannot be determined because of the uncertainty in the success of passive acoustic monitoring of sei whales. The effectiveness of many management activities is not known on a global level. Currently it is impossible to predict when such measures will bring the species to a point at which the protections provided by the ESA are no longer warranted, or even determine whether the species has recovered enough to be downlisted or delisted. In the future, as more information is obtained it should be possible to make more informative projections about the time to recovery, and its expense.

NMFS will consider all substantive comments and information presented during the public comment period in the course of finalizing this Plan. NMFS concludes that the Draft Recovery Plan meets the requirements of the ESA.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: July 18, 2011.

Therese Conant,

Deputy Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–18583 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA591

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of receipt and request for comment.

SUMMARY: Notice is hereby given that NMFS has received two applications for direct take permits, in the form of Hatchery and Genetic Management Plans (HGMPs) pursuant to the Endangered Species Act of 1973, as amended (ESA), one application from the Washington Department of Fish and Wildlife (WDFW) and one from the Bureau of Indian Affairs (BIA) on behalf of the Nez Perce Tribe (NPT). The Idaho Department of Fish and Game (IDFG) is identified as a co-applicant in the WDFW HGMP. The proposed permits would expire in 2018. This document serves to notify the public of the availability of the permit applications and addenda for public review, comment, and submission of written data, views, arguments or other relevant information. All comments and other information received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Comments and other submissions must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on August 22, 2011.

ADDRESSES: Written responses to the application should be sent to Craig Busack, National Marine Fisheries Service, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: *SnakeFallPlans.nwr@noaa.gov.* Include in the subject line of the e-mail comment the following identifier: Comments on Snake Fall Chinook HGMPs. Comments may also be sent via facsimile (fax) to (503) 872–2737. Requests for copies of the permit applications should be directed to the National Marine Fisheries Service, Salmon Management Division, 1201 NE. Lloyd Boulevard, Suite 1100, Portland, OR 97232. The documents are also available on the Internet at *http://www.nwr.noaa.gov.* Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230–5418.

FOR FURTHER INFORMATION CONTACT: Craig Busack at (503) 230–5412 or e-mail: *craig.busack@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

Chinook salmon (*Oncorhynchus tshawytscha*): threatened, naturally produced and artificially propagated Snake River fall-run.

Background

Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to take listed species for any act otherwise prohibited by section 9 for scientific purposes or to enhance the propagation or survival of the affected species under section 10(a)(1)(A) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

On May 11, 2011, NMFS received an application from the WDFW for an ESA section 10(a)(1)(A) permit for the direct take of ESA-listed Snake River fall Chinook salmon in order to carry out artificial propagation (hatchery) programs at the Lyons Ferry, Oxbow, and Umatilla Hatcheries and associated facilities to enhance the species. The purpose of these programs is to mitigate for losses of Snake River fall Chinook salmon caused by the four lower Snake River dams and the Hells Canyon dam complex.

Also on May 11, 2011, NMFS received an application from the BIA on behalf of the NPT for an ESA section 10(a)(1)(A) permit for the direct take of ESA-listed Snake River fall Chinook salmon in order to carry out an artificial propagation (hatchery) program at the Nez Perce Tribal Hatchery and associated facilities to enhance the species. The purpose of this program is to mitigate for losses of Snake River fall Chinook salmon caused by the Federal Columbia River Power System.

On July 18, 2011, the applicants jointly submitted an addendum to the HGMPs. The HGMPs and addendum propose continuation of the programs as currently designed with two important additions. First, the programs will be evaluated annually for indications of adverse effects on the Snake River fall Chinook salmon population and, second, the programs will be augmented by new research, monitoring, and evaluation (RM&E) to address uncertainties about hatchery program effects on Snake River fall Chinook salmon viability. The indicator that will be monitored annually and the new RM&E actions are described in the addendum, which is available for public review and comment as part of the permit application package.

Authority

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate each application, associated documents, and comments submitted thereon to determine whether the applications meet the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, permits will be issued to WDFW, IDFG, and NPT as co-permit holders for the purpose of carrying out the hatchery programs. NMFS will publish a record of its final action in the **Federal Register**.

Dated: July 19, 2011.

Therese Conant,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–18581 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA586

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) ad hoc groundfish Essential Fish Habitat Review Committee (EFHRC) will hold a work session, which is open to the public, to plan the periodic 5-year review of groundfish Essential Fish Habitat (EFH).

DATES: The work session will be held Thursday, October 6, 2011, from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Pacific Council Office, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: (503) 820–2280.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Staff Officer, Pacific Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the work session is to review progress and interim products for the groundfish EFH periodic 5-year review. Recommendations are tentatively scheduled to be presented to the Pacific Council at the April, 2012 Council meeting in Seattle, WA.

Although non-emergency issues not contained in the meeting agenda may come before the EFHRC for discussion, those issues may not be the subject of formal EFHRC action during this meeting. EFHRC action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the EFHRC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–18475 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA585

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Pacific Fishery Management Council's (Pacific Council) Tule Chinook Workgroup (TCW) will hold a meeting to review work products and develop an abundance-based harvest management approach for Columbia River natural tule Chinook. This meeting of the TCW is open to the public.

DATES: The meeting will be held Tuesday, August 9, 2011, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Pacific Council Office, 7700 NE. Ambassador Place, Suite 101, Portland, OR 97220–1384; telephone: (503) 820–2280.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Salmon Management Staff Officer, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: This meeting of the TCW will involve review of work products and summarizing draft results for initial presentation to the Pacific Council. TCW work products will be reviewed by the Pacific Council, and if approved, would be submitted to NMFS for possible consideration in the next Lower Columbia River tule biological opinion for ocean salmon seasons in 2012 and beyond, and distributed to State and Federal recovery planning processes. In the event that a usable approach emerges from this process, the Pacific Council may consider a fishery management plan (FMP) amendment process beginning after November 2011 to adopt the approach as a formal conservation objective in the Salmon FMP.

Although non-emergency issues not contained in the meeting agenda may come before the TCW for discussion, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public

has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: July 18, 2011.

Tracey L. Thompson,

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

[FR Doc. 2011–18474 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XZ86

Marine Mammals; File No. 14525

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Oleg Lyamin, PhD, Dept. of Psychiatry, School of Medicine, University of California at Los Angeles (UCLA), 16111 Plummer St., North Hills, CA 91343, to import and export marine mammal specimens for scientific research.

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

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

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

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On October 21, 2010, notice was published in the **Federal Register** (75 FR 64986) that a request for a permit to import northern fur seal (*Callorhinus ursinus*) specimens for scientific research had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 14525 authorizes the import of biological samples from 10 fur seals for studies on the mechanisms of sleep in fur seals. Samples will be imported from Russia to UCLA for analysis, and samples will be exported from the U.S. to South Africa for additional analysis. The permit is valid for five years from the date of issuance.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: July 18, 2011.

P. Michael Payne,

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

[FR Doc. 2011–18579 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Technical Information Service

National Technical Information Service Advisory Board

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice announces the next meeting of the National Technical Information Service Advisory Board (the Advisory Board), which advises the Secretary of Commerce and the Director of the National Technical Information Service (NTIS) on policies and operations of the Service.

DATES: The Advisory Board will meet on Thursday, August 25 from 9 a.m. to approximately 4:15 p.m.

ADDRESSES: The Advisory Board meeting will be held in Room 115 of the NTIS Facility at 5301 Shawnee Road, Alexandria, Virginia 22312. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Steven D. Needle, (703) 605–6404, *sneedle@ntis.gov.*

SUPPLEMENTARY INFORMATION: The NTIS Advisory Board is established by Section 3704b(c) of Title 15 of the United States Code. The charter has been filed in accordance with the requirements of the Federal Advisory Committee Act, as amended (5 U.S.C. App.).

The morning session will feature a general review of NTIS lines of business, but the focus will be on strategic planning issues. The afternoon session will feature risk assessment from both an operational and strategic perspective and an opportunity to receive any public comments, as noted below. It will conclude with a roundtable discussion by the Board members and a variety of administrative matters. A final agenda and summary of the proceedings will be posted at the NTIS Web site as soon as they are available (*http://www.ntis.gov/about/advisorybd.asp*).

The NTIS Facility is a secure one. Accordingly, persons wishing to attend should call the contact identified above to arrange for admission. If there are sufficient expressions of interest up to one-half hour will be reserved for public comments during the afternoon session. Questions from the public will not be considered by the Board, but any person who wishes to submit a written statement for the Board's consideration should mail or e-mail it to the contacts named above not later than August 19, 2011.

Dated: July 18, 2011.

Bruce Borzino,

Director.

[FR Doc. 2011–18584 Filed 7–21–11; 8:45 am]

BILLING CODE 3510–04–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Effective Date:* 8/22/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/29/2011 (76 FR 23998) and 5/27/2011 (76 FR 30923–30924), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Recordable DVDs and CDs

NSN: 7045–01–444–5160—Compact Disc, Recordable, Single, Silver.
NSN: 7045–00–NIB–0264—Compact Disc, Recordable, 50 CDs on Spindle, White Ink Jet Printable, Silver.
NSN: 7045–01–521–4221—Compact Disk, Recordable, 50 CDs on Spindle, Silver.
Coverage: A-List for the total Government requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
NSN: 7045–01–521–4250—Digital Video Disc, + Recordable Rewritable, 25 DVDs on Spindle, Silver.
NSN: 7045–01–521–4243—Digital Video Disc,—Recordable, 25 DVDs on Spindle, Silver.
NSN: 7045–01–521–4235—Digital Video Disc, + Recordable, 25 DVDs on Spindle, Silver.
NSN: 7045–01–521–4216—Compact Disc, Recordable, 25 CDs on Spindle, Silver.
Coverage: B-List for the broad Government requirement as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: Defense Logistics Agency Troop Support, Philadelphia, PA.
NSN: 7920–01–343–3776—Wet Mop Wringer and Bucket Set, Yellow.
NPA: New York City Industries for the Blind, Inc., Brooklyn, NY.
Contracting Activity: General Services Administration, Fort Worth, TX
Coverage: A-List for the Total Government Requirement as aggregated by the General Services Administration.

Melamine Serverware (Military Resale)

NSN: M.R. 305—Melamine Dinner Plate.
NSN: M.R. 306—Melamine Fruit Plate.
NSN: M.R. 307—21oz Melamine Tumbler.
NSN: M.R. 308—Bamboo Placemat.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: Military Resale-Defense Commissary Agency, Fort Lee, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.
NSN: 8465–01–580–1312—Bandoleer Ammunition Pouch, MOLLE Components, OCP.
NPAs: The Arkansas Lighthouse for the Blind, Little Rock, AR;
Mississippi Industries for the Blind, Jackson, MS.
Contracting Activity: Department of the Army Research, Development, & Engineering Command, Natick, MA.
Coverage: C-List for 100% of the requirement of the Department of the Army, as aggregated by the Department of the Army Research, Development, & Engineering Command, Natick, MA.

Services

Service Type/Location: HVAC/Building Maintenance Services,
White Sands Missile Range, NM.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army, W6QM White Sands DOC, White Sands Missile Range, NM.
Service Type/Location: Facilities Maintenance, Yakima Training Center and Multipurpose Range Complex, Multipurpose Training Range, Yakima, WA.
NPA: Skookum Educational Programs, Bremerton, WA.
Contracting Activity: Dept of the Army, W6QM FT Lewis, Directorate of Contracting, Fort Lewis, WA.

The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) operates pursuant to statutory and regulatory requirements. The Committee regulation at 41 CFR part 51–2–4 states that for a commodity or service to be suitable for addition to the Procurement List each of the following criteria must be satisfied: Employment potential, nonprofit agency qualifications, capability, and a less than severe level of impact on the current contractor for the commodity or service.

Comments were received from a law firm on behalf of the incumbent contractor. The comments assert that the Committee should not add this project to the Procurement List for several reasons including (1) Financial impact on the current contractor; (2) the project is not appropriate for people with severe disabilities to perform; (3) the prospective nonprofit agency has no experience performing these type services; (4) the impact on employees of the contractor; and (5) this type project is not what Congress intended when enacting the Javits-Wagner-O'Day (JWOD) Act.

Information available to the Committee in considering this project indicates that there would not be a severe adverse impact to the contractor if this project is added to the Procurement List. The Committee, with its experience and expertise, has determined that people with severe disabilities are capable of performing the type of work required, and that the proposed nonprofit agency is qualified and capable of performing this work, based on applicable experience. Finally, the purpose of the JWOD Act and the responsibility of the Committee are to create employment opportunities for people with the most severe disabilities, who cannot obtain or maintain employment on their own. The remedial nature of the JWOD Act is such that Committee actions may result in an incumbent contractor not having the opportunity to compete for follow-on contracts; commercial contractors and their employees are better able to obtain employment than individuals with severe disabilities who historically have encountered greater obstacles than non-disabled employees. A planned transition period will afford incumbent employees the opportunity to continuing working while they seek other positions. Accordingly, after full consideration, the Committee has determined that the service is suitable for addition to the Procurement List.

Service Type/Location: Custodial Services, WI092 Hammond USARC, 1935 Engineer Way, Hammond, WI.
NPA: Opportunity Partners Inc., Minnetonka, MN.
Contracting Activity: Dept of the Army, W6QM Army Res Contr Ctr North, Fort McCoy, WI.
Service Type/Location: Base Operation

Support Service, Department of Public Works (DPW), Fort Sill, OK.

NPAs: Professional Contract Services, Inc., Austin, TX (Prime Contractor); Work Services Corporation, Wichita Falls, TX (Subcontractor).

Contracting Activity: Dept of the Army, W6QM Ft Sam Houston Contr Ctr, Fort Sam Houston, TX.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2011–18516 Filed 7–21–11; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add products and services to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a product previously furnished by such agency.

DATES: *Comments must be received on or before:* 8/22/2011.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

For Further Information or To Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: AF340—Turtleneck, USAF, Unisex, Dark Navy Blue, Numerous Sizes

NSN: AF390—Coveralls/Jumpsuit, USAF, Unisex, Lightweight, Dark Navy, Blue, Numerous Sizes

NSN: AF420—Nameplate, Class A, USAF, Metal, Polished Nickel Finish with black Lettering

NSN: AF412B—Belt, Class B/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes

NSN: AF9470—Badge, USAF, ''TRAINING SUPERVISOR'', Metallic Polished Nickel Finish, 1″x7/8″

NSN: AF9460—Badge, USAF, ''SHIFT SUPERVISOR'', Metallic Polished Nickel Finish, 1″x7/8″

NSN: AF9450—Badge, USAF, ''ASSISTANT TO THE OPERATIONS OFFICER'', Metallic Polished Nickel Finish, 1″x7/8″

NSN: AF9440—Badge, USAF, ''DEPUTY CHIEF'', Metallic Polished Nickel Finish, 1″x7/8″

NSN: AF9490—Necktie, USAF, Unisex, Dark Navy Blue

NSN: AF9483—Insignia, USAF, Collar Chevrons Officer (3 Stripes), USAF Metallic Silver or Polished Nickel Finish

NSN: AF9412—Badge, ''Police'', USAF, Nickel Finish, 3″x2″

NSN: AF9411—Patch, USAF, Longevity Stripe, Blue and Gold

NSN: AF330—Jacket, USAF, Waist Length, Unisex, Dark Navy Blue, Numerous Sizes

NSN: AF320—Pants, USAF, Unisex, Rain, Dark Navy Blue, Numerous Sizes

NSN: AF310—Jacket, USAF, ¾ Length, Unisex, Dark Navy Blue, Numerous Sizes

NSN: AF230—Trousers, Class B/Utility, USAF, Unisex, Dark Navy Blue, Numerous Sizes

NSN: AF220—Shirt, Class B/Utility, USAF, Short Sleeve, Unsex, Dark Navy Blue, Numerous Sizes

NSN: AF210—Shirt, Class B/Utility, USAF, Long Sleeve, Unisex, Dark Navy Blue, Numerous Sizes

NSN: AF150—Hat, Formal, USAF, Unisex, Dark Navy Blue, S;M;L;XL

NSN: AF140—Ballcap, Standard, USAF, Unisex, Dark Navy Blue, M/L;L/XL

NSN: AF131—Pants, Class A/Primary Duty, USAF, Women's, Flex Waist, Dark Navy Blue, Numerous Sizes

NSN: AF130—Pants, Class A/Primary Duty, USAF, Men's, Flex Waist, Dark Navy Blue, Numerous Sizes

NSN: AF121—Shirt, Class A/Primary Duty, USAF, Women's Short Sleeve, Dark Navy Blue, Numerous Sizes

NSN: AF120—Shirt, Class A/Primary Duty, USAF, Men's, Short Sleeve, Dark Navy Blue, Numerous Sizes

NSN: AF111—Shirt, Class A/Primary Duty, USAF, Women's, Long Sleeve, Dark Navy Blue, Numerous Sizes

NSN: AF110—Shirt, Class A/Primary Duty, USAF, Men's, Long Sleeve, Dark Navy Blue, Numerous Sizes

NSN: AF9415—Hat Badge, Formal, USAF, Nickel Finish

NSN: AF9414G—Patch, ''Guard, USAF, Half Size, 3″x2″

NSN: AF9410P—Patch, ''Police'', USAF, Half Size, 3″x2″

NSN: AF9413G—Patch, ''Guard'', USAF, Full Size, 4″x5/8″

NSN: AF9410—Necktie Bar Clasp, USAF, Metal, Polished Nickel Finish

NSN: AF9482—Insignia, USAF, Collar Chevrons Officer (2 stripes), USAF, Metallic Silver or Polished Nickel Finish

NSN: AF430—Nameplate, Class B, USAF, Cloth, Dark Navy Blue with Silver/Gray Thread Lettering

NSN: AF411A—Belt, Class A/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes

NSN: AF380—Over Pants, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes

NSN: AF350—Fleece Liner, USAF, Unisex, Dark Navy Blue, Liner for Jacket, Numerous Sizes

NSN: AF360—Cap USAF, Unisex, Weather Watch, Dark Navy Blue, One Size Fits All

NSN: AF370—Parka, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes

NSN: AF9413P—Patch, ''Police'', USAF, Full Size, 4″x5/8″

NPA: Human Technologies Corporation, Utica, NY.

Contracting Activity: Dept.of the Air Force, FA8003 ESG DD, Wright Patterson AFB, OH.

Coverage: C-List for 100% of the requirement of the U.S. Air Force as aggregated by the Air Force Material Command, Wright Patterson AFB, OH.

Eyeglasses

6650–00–NIB–0009—Single Vision, Plastic, Clear

6650–00–NIB–0010—Flat Top 28, Bifocal,

Plastic, Clear
6650–00–NIB–0011—Flat Top 35, Bifocal, Plastic, Clear
6650–00–NIB–0012—Round 25 and 28 Bifocal, Plastic, Clear
6650–00–NIB–0013—Flat Top 7x28 Trifocal, Plastic, Clear
6650–00–NIB–0014—Flat Top 8x35 Trifocal, Plastic, Clear
6650–00–NIB–0015—Progressives (VIP, Adaptar, Freedom, Image), Plastic
6650–00–NIB–0016—SV aspheric lenticular, Plastic, Clear
6650–00–NIB–0017—FT or round aspheric lenticular, Plastic, Clear
6650–00–NIB–0018—Executive Bifocal, Plastic, Clear
6650–00–NIB–0019—Single Vision, Glass, Clear
6650–00–NIB–0020—Flat Top 28 Bifocal, Glass, Clear
6650–00–NIB–0021—Flat Top 35 Bifocal, Glass, Clear
6650–00–NIB–0022—Flat Top 7x28 Trifocal, Glass, Clear
6650–00–NIB–0023—Flat Top 8x35 Trifocal, Glass, Clear
6650–00–NIB–0024—Progressives (VIP, Adaptar, Freedom), Glass, Clear
6650–00–NIB–0025—Executive Bifocal, Glass, Clear
6650–00–NIB–0026—Single Vision, Polycarbonate, Clear
6650–00–NIB–0027—Flat Top 28 Bifocal, Polycarbonate, Clear
6650–00–NIB–0028—Flat Top 35 Bifocal, Polycarbonate, Clear
6650–00–NIB–0029—Flat Top 7x28 Trifocal, Polycarbonate, Clear
6650–00–NIB–0030—Flat Top 8x35 Trifocal, Polycarbonate, Clear
6650–00–NIB–0031—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate

Lenses, Only

6650–00–NIB–0032—Single Vision, Plastic, Clear
6650–00–NIB–0033—Flat Top 28, Bifocal, Plastic, Clear
6650–00–NIB–0034—Flat Top 35, Bifocal, Plastic, Clear
6650–00–NIB–0035—Round 25 and 28 Bifocal, Plastic, Clear
6650–00–NIB–0036—Flat Top 7x28 Trifocal, Plastic, Clear
6650–00–NIB–0037—Flat Top 8x35 Trifocal, Plastic, Clear
6650–00–NIB–0038—Progressives (VIP, Adaptar, Freedom, Image), Plastic
6650–00–NIB–0039—SV aspheric lenticular, Plastic, Clear
6650–00–NIB–0040—FT or round aspheric lenticular, Plastic, Clear
6650–00–NIB–0041—Executive Bifocal, Plastic, Clear
6650–00–NIB–0042—Single Vision, Glass, Clear
6650–00–NIB–0043—Flat Top 28 Bifocal, Glass, Clear
6650–00–NIB–0044—Flat Top 35 Bifocal, Glass, Clear
6650–00–NIB–0045—Flat Top 7 x 28 Trifocal, Glass, Clear
6650–00–NIB–0046—Flat Top 8 x 35 Trifocal, Glass, Clear
6650–00–NIB–0047—Progressives (VIP, Adaptar, Freedom), Glass, Clear
6650–00–NIB–0048—Executive Bifocal, Glass, Clear
6650–00–NIB–0049—Single Vision, Polycarbonate, Clear
6650–00–NIB–0050—Flat Top 28 Bifocal, Polycarbonate, Clear
6650–00–NIB–0051—Flat Top 35 Bifocal, Polycarbonate, Clear
6650–00–NIB–0052—Flat Top 7 x 28 Trifocal, Polycarbonate, Clear
6650–00–NIB–0053—Flat Top 8 x 35 Trifocal, Polycarbonate, Clear
6650–00–NIB–0054—Progressives (VIP, Adaptar, Freedom, Image), Polycarbonate

Tints and Coatings

6650–00–NIB–0055—Transition, Plastic, CR–39
6650–00–NIB–0056—Photochromatic/Transition, (Polycarbonate Material)
6650–00–NIB–0057—Photogrey (glass only)
6650–00–NIB–0058—High Index transition (CR 39)
6650–00–NIB–0059—Anti-reflective coating (CR 39 and polycarbonate)
6650–00–NIB–0060—Ultraviolet coating (CR 39)
6650–00–NIB–0061—Polarized lenses (CR 39)

Lens Add-Ons

6650–00–NIB–0062—Slab-off (polycarbonate, CR 39: trifocal and bifocal)
6650–00–NIB–0063—High Index (CR 39)
6650–00–NIB–0064—Prism (up to 6 diopters no charge) > 6 diopters/pe
6650–00–NIB–0065—Diopter + or − 9.0 and above
6650–00–NIB–0066—Lenses, oversize eye, greater than 58, excluding pro
6650–00–NIB–0067—Hyper 3 drop SV, jultifocal (CR 39)
6650–00–NIB–0068—Add powers over 4.0
6650–00–NIB–0069—Plastic or Metal

NPA: Winston-Salem Industries for the Blind, Winston-Salem, NC
Contracting Activity: Veterans Integrated Service Network (VISN) 18, Mesa, AZ.
Coverage: C-list for the requirements of VISN 18 as aggregated by the VISN 18 Contracting Activity, Mesa, AZ.

Services:

Service Type/Location: Package Reclamation, DLA–Wide, Defense Distribution Center, Tinker AFB, Oklahoma City, OK.
NPA: NewView Oklahoma, Inc., Oklahoma City, OK.
Contracting Activity: Defense Logistics Agency, DLA Distribution, New Cumberland, PA.

The package reclamation service that is the subject of this **Federal Register** Notice is being added for performance at distribution centers that are organic to DLA Distribution. In 2010, the Defense Distribution Center (DDC) was renamed DLA Distribution. A process was also initiated, by which the remaining depots under its control, would undergo a similar name change. Eventually, each distribution center that was part of the former DDC will be renamed as DLA Distribution, plus its location name. The missions of DLA Distribution and its various depots remained essentially unchanged. DLA Distribution, Office of Procurement, 2001 Mission Drive, New Cumberland, PA 17070 is the contracting activity of record for the IDIQ contract under which the Package Reclamation Service will be offered. The first Distribution Center that will take advantage of the Package Reclamation Service, if it is approved for addition to the Procurement List, is at Tinker Air Force Base, Oklahoma.

Service Type/Location: Peel & Stick Program Support, U.S. Coast Guard-Wide, 1750 Claiborne Avenue, Shreveport, LA.
NPA: Louisiana Association for the Blind, Shreveport, LA.
Contracting Activity: Dept. of Homeland Security, U.S. Coast Guard, Lockport, LA.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. If approved, the action may result in authorizing small entities to furnish the product to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for deletion from the Procurement List.

End of Certification

The following product is proposed for deletion from the Procurement List:

Product

NSN: 2090–00–372–6064—Repair Kit, Standard
NPA: Mid-Valley Rehabilitation, Inc., McMinnville, OR.
Contracting Activity: Defense Logistics Agency Land and Maritime, Columbus, OH.

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2011–18515 Filed 7–21–11; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Amendment of Department of Defense Federal Advisory Committee

AGENCY: Department of Defense.

ACTION: Charter Amendment of Federal Advisory Committee.

SUMMARY: Under the provisions of 10 U.S.C. 175 and 10301 (as amended by Section 514 of the National Defense

Authorization Act for Fiscal Year 2011, Pub. L. 111–383), the Federal Advisory Committee Act of 1972, (5 U.S.C. Appendix), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.50(a), the Department of Defense (DoD) gives notice that it is amending the charter for the Reserve Forces Policy Board (hereafter referred to as the ''Board'').

The Board is a non-discretionary Federal advisory committee that shall serve as an independent adviser to the Secretary of Defense to provide advice and recommendations on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components. The Board may act on those matters referred to it by the Chairman and or any matter raised by a member of the Board or the Secretary of Defense. The Under Secretary of Defense (Personnel and Readiness) may act upon the Board's advice and recommendations.

The Board, pursuant to 10 U.S.C. 10301(c), shall consists of 20 members, appointed or designated as follows:

a. A civilian appointed by the Secretary of Defense from among persons determined by the Secretary to have the knowledge of, and experience in, policy matters relevant to national security and reserve component matters necessary to carry out the duties of chair of the Board, who shall serve as chair of the Board;

b. Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Army—

a. One of whom shall be a member of the Army Nation Guard of the United States or a former member of the Army National Guard of the United States in the Retired Reserve; and

b. One of whom shall be a member or retired member of the Army Reserve.

c. Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon recommendation of the Secretary of the Navy—

(1) One of whom shall be an active or retired officer of the Navy Reserve; and

(2) One of whom shall be an active or retired officer of the Marine Corps Reserve.

d. Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force—

(1) One of whom shall be a member of the Air National Guard of the United States or a former member of the Air National Guard of the United States in the Retired Reserve; and

(2) One of whom shall be a member or retired member of the Air Force Reserve.

e. One active or retired reserve officer or enlisted member of the U.S. Coast Guard designated by the Secretary of Homeland Security.

f. Ten persons appointed or designated by the Secretary of Defense, each of whom shall be a United States citizen having significant knowledge of and experience in policy matters relevant to national security and reserve component matters and shall be one of the following:

(1) An individual not employed in any Federal or State department or agency;

(2) An individual employed by a Federal or State department or agency;

(3) An officer of a regular component of the armed forces on active duty, or an officer of a reserve component of the armed forces in an active status, who;

1. Is serving or has served in a senior position on the Joint Staff, the headquarters staff of a combatant command, or the headquarters staff of an armed force; and

2. Has experience in joint professional military education, joint qualification, and joint operations matters.

g. A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general or flag officer recommended by the chair and designated by the Secretary of Defense, who shall serve without vote—

(1) As military adviser to the chair;

(2) As military executive officer of the Board; and

(3) As supervisor of the operations and staff of the Board.

h. A senior enlisted member of a reserve component recommended by the chair and designated by the Secretary of Defense, who shall serve without vote as enlisted military adviser to the chair.

Board members appointed by the Secretary of Defense, who are not full-time or permanent part-time Federal employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109 and shall serve as special government employees. All Board members are appointed to provide advice on behalf of the government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. The Secretary of Defense shall renew their appointments on an annual basis. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

With DoD approval, the Board is authorized to establish subcommittees, as necessary and consistent with its mission. These subcommittees shall operate under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 (5 U.S.C. 552b), and other governing Federal statutes and regulations.

Such subcommittees shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Board for full deliberation and discussion. Subcommittees have no authority to make decisions on behalf of the chartered Board; nor can they report directly to the Department of Defense or any Federal officers or employees who are not Board members.

Subcommittee members, who are not Board members, shall be appointed in the same manner as the Board members. Such individuals, if not full-time or part-time government employees, shall be appointed to serve as experts and consultants under the authority of 5 U.S.C. 3109, and serve as special government employees, whose appointments must be renewed on an annual basis. With the exception of travel, subcommittee members shall serve without compensation.

FOR FURTHER INFORMATION CONTACT: Jim Freeman, Deputy Advisory Committee Management Officer for the Department of Defense, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Board shall meet at the call of the Designated Federal Officer, in consultation with the Board's chairperson and the estimated number of Board meetings is four per year.

The Designated Federal Officer, pursuant to DoD policy, shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with governing DoD policies and procedures. In addition, the Designated Federal Officer is required to be in attendance at all Board and subcommittee meetings for the entire duration of each and every meeting; however, in the absence of the Designated Federal Officer, the Alternate Designated Federal Officer shall attend the entire duration of the Board or subcommittee meeting.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Reserve Forces Policy Board's membership about the Board's mission and functions. Written statements may be submitted at any time or in response to the stated agenda

of planned meeting of Reserve Forces Policy Board.

All written statements shall be submitted to the Designated Federal Officer for the Reserve Forces Policy Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Reserve Forces Policy Board Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Reserve Forces Policy Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: July 14, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–18592 Filed 7–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2011–OS–0081]

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/Central Security Service, Department of Defense.

ACTION: Notice to Delete a System of Records.

SUMMARY: The National Security Agency/Central Security Service is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on August 22, 2011 unless comments are received which result in a contrary determination.

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

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

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

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill, National Security Agency/Central Security Service, Freedom of Information Act and Privacy Act Office, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248, or by phone at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The National Security Agency proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: July 19, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

GNSA 04

SYSTEM NAME:

NSA/CSS Military Reserve Personnel Data (October 23, 2008, 73 FR 63141).

REASON:

The category of individuals covered by this system is obsolete. NSA/CSS no longer has inactive duty military reserve personnel assigned to NSA mobilization billets, therefore, there are no training requirements for these individuals. All Agency training records are covered under GNSA 12, NSA/CSS Education, Training and Workforce Development (March 24, 2009, 74 FR 12116).

[FR Doc. 2011–18593 Filed 7–21–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability for Exclusive, Non-Exclusive, or Partially-Exclusive Licensing of an Invention Concerning Method of Diagnosing of Exposure to Toxic Agents by Measuring Distinct Pattern in the Levels of Expression of Specific Genes

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Announcement is made of the availability for licensing of the invention set forth in U.S. Patent 6,316,197, entitled ''Method of Diagnosing of Exposure to Toxic Agents by Measuring Distinct Pattern in the Levels of Expression of Specific Genes,'' issued November 13, 2001. The United States Government, as represented by the Secretary of the Army, has rights to this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research and Technology Applications (ORTA), (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: The invention relates to a method of diagnosing exposure to a toxic agent by determining a difference in the detected amount of protein/gene expression between exposed and unexposed samples.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–18524 Filed 7–21–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board Summer Study Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) and 41 Code of the Federal Regulations (CFR 102–3. 140 through 160, the Department

of the Army announces the following committee meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: August 10, 2011.

Time(s) of Meeting: 0800–1200.

Location: Newport News Marriott at City Center, 740 Town Center Drive, Newport News, VA 23606.

Purpose: Adopt the findings and recommendations for phase one of the following studies: *Strengthening Sustainability and Resiliency of a Future Force* and *Tactical Non-cooperative Biometric Systems.*

Proposed Agenda:

Wednesday 10 August:

0830–1130 Study results for *Strengthening Sustainability and Resiliency of a Future Force and Tactical Non-Cooperative Biometric Systems* are presented to the ASB. The ASB deliberates and votes to adopt the findings and recommendations on the studies.

FOR FURTHER INFORMATION CONTACT: For information please contact Mr. Justin Bringhurst at *justin.bringhurst@us.army.mil* or (703) 617–0263 or Carolyn German at *carolyn.t.german@us.army.mil* or (703) 617–0258.

SUPPLEMENTARY INFORMATION: None.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–18521 Filed 7–21–11; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Termination of the Environmental Impact Statement (EIS) for the Proposed Regional Watershed Supply Project in Wyoming and Colorado

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

ACTION: Notice.

SUMMARY: The U. S. Army Corps of Engineers, Omaha District, Regulatory Branch is notifying interested parties that it has terminated the process to develop a Draft Environmental Impact Statement (DEIS) and has withdrawn the Section 404 Clean Water Act permit application for the proposed 'Regional Watershed Supply Project' submitted in 2008 by a private water development entity known as Million Conservation Resource Group (MCRG). The original Notice of Intent to Prepare an EIS was published in the **Federal Register** on Friday, March 20, 2009 (74 FR 11920), with subsequent amended announcements on May 8, 2009 (74 FR 21665) and August 11, 2009 (74 FR 40171).

FOR FURTHER INFORMATION CONTACT: Questions regarding the termination of this EIS process should be addressed to Ms. Rena Brand, Project Manager, U.S. Army Corps of Engineers, Denver Regulatory Office, 9307 S. Wadsworth Blvd., Littleton, CO 80128–6901; (303)–979–4120; *mcrg.eis@usace.army.mil.*

SUPPLEMENTARY INFORMATION: After the initial public scoping process in 2009, the Corps received 7,409 substantive comments related to the applicant's proposal to construct a 558 mile water pipeline from Flaming Gorge Reservoir in Southwest Wyoming to a terminating storage reservoir near Pueblo, Colorado, designed to supply up to 250,000 acre feet of water annually to various municipal and agricultural entities in Eastern Wyoming and the Front Range of Colorado. A common concern expressed dealt with the need for the water, what entities would be using the water, and for what purposes. On April 1, 2011, MCRG expressed to the Corps that they wished to change the primary purpose of the project to power generation. When the EIS process started in 2009, it was understood that the project purpose was water supply, so all EIS work done to date, to include public scoping was related to that purpose. The project now has an uncertain and variable purpose, which technically makes the applicant's permit application incomplete. Additionally, Corps' regulations require that applicants be provided sufficient time to respond to requests from the Corps for information, normally not to exceed 30 days. At the close of a recent 60-day stop work request by MCRG, the Corps decided to withdraw the permit application, as MCRG did not officially respond with a decision about how the EIS was to proceed, as requested by the Corps. The Corps decided that now is the appropriate time to officially terminate the EIS. The Corps' neutral role in this EIS process was to evaluate the environmental consequences of proposed projects such as these under authority of Section 404 of the Clean Water Act. The preparation of the EIS was being conducted by a third-party contractor directed by the Corps, and funded by the permit applicant, which is typical of Corps Regulatory EIS studies. Withdrawal of the permit application and termination of the EIS process will not prevent MCRG from re-applying at a later date, and will not affect other ongoing Corps water supply studies along the Colorado Front Range.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2011–18523 Filed 7–21–11; 8:45 am]

BILLING CODE 3720–58–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 August 22, 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: July 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute for Education Sciences

Type of Review: Revision.

Title of Collection: Fast Response Survey System (FRSS) 104: Dual Credit and Exam-Based Courses in Public High Schools: 2010–11 & Post Education Quick Information System (PEQIS) 18: Dual Enrollment of High School Students at Postsecondary Institutions: 2010–11.

OMB Control Number: 1850–0733.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals and households; Not-for-profit institutions; State, Local, or Tribal Government.

Estimated Number of Annual Responses: 9,655.

Total Estimated Annual Burden Hours: 2,157.

Abstract: The Fast Response Survey System (FRSS) and the Postsecondary Education Quick Information System (PEQIS) collect issue-oriented data quickly and with minimum response burden outside of National Center of Education Statistics' (NCES') large recurring surveys. Both systems were designed to collect and report data on key education issues at the elementary and secondary levels, and to meet the data needs of Department of Education analysts, planners, and decision-makers when information cannot be collected quickly through NCES' large recurring surveys. The purpose of the forthcoming two complementary FRSS and PEQIS surveys is to collect data about dual credit and dual enrollment programs offered to high school students. The FRSS 104 survey will provide nationally representative data on prevalence and enrollment of dual credit and exam-based courses in public high schools, while the PEQIS 18 will provide nationally representative data on the prevalence of college course-taking by high school students both within and outside of dual enrollment programs offered by postsecondary institutions. This is the second iteration of both surveys, previously conducted in school year 2002–03. This request is for clearance of the FRSS 104 and PEQIS 18 questionnaires and full scale data collection.

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 4671. 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. 2011–18517 Filed 7–21–11; 8:45 am]

BILLING CODE 4000–01–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, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 20, 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, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: July 18, 2011.

Darrin A. King,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Institute of Education Sciences

Type of Review: Revision.

Title of Collection: National Longitudinal Transition Study 2012.

OMB Control Number: 1850–0882.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 75,600.

Total Estimated Number of Annual Burden Hours: 32,040.

Abstract: To gauge progress in addressing the needs of youth with disabilities, the U.S. Department of Education is sponsoring a five-year longitudinal study focused on the educational and transitional experiences of youth between the ages of 13 and 21 in December 2011. The study focuses on three sets of research questions: What are the characteristics of youth with disabilities? What services and accommodations do they receive and what are their courses of study? What are their transitional experiences as they leave high school and their educational, social, and economic outcomes?

The study will compare this group with three other groups: (1) Youth who have no identified disability, (2) youth who do not have an individualized education plan (IEP) but who have a condition that qualifies them for accommodation under Section 504 of

the Vocational Rehabilitation Act of 1973, and (3) similar cohorts of youth with an IEP who were studied in the past.

Districts and youth will be randomly selected to ensure that they are nationally representative. The study sample will include approximately 500 school districts and 15,000 students. Phase I data collection will occur in spring 2012 and spring 2014, when sample members will be ages 13–21 and 15–23, respectively. The study will collect data from parents, youth, principals, teachers, and student school records.

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 4673. 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. 2011–18519 Filed 7–21–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC11–510–000]

Commission Information Collection Activities (FERC–510); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Energy.

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 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due September 20, 2011.

ADDRESSES: Comments may be filed either electronically (eFiled) or in paper format, and should refer to Docket No. IC11–521–000. 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 username 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.* In addition, 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. IC11–521. 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–510, ''Application for Surrender of Hydropower License'', (OMB No. 1902–0068) is used by the Commission to implement the statutory provisions of sections 4(e), 6 and 13 of the Federal Power Act (FPA) 16 U.S. Code (U.S.C). sections 797(e), 799 and 806. Section 4(e) gives the Commission authority to issue licenses for the purposes of constructing, operating and maintaining dams, water conduits, reservoirs, powerhouses, transmission lines or other power project works necessary or convenient for developing and improving navigation, transmission and utilization of power over which Congress has jurisdiction. Section 6 gives the Commission the authority to prescribe the conditions of licenses including the revocation or surrender of the license. Section 13 defines the Commission's authority to delegate time periods for when a license must be terminated if project construction has not begun. Surrender of a license may be desired by a licensee when a licensed project is retired, not constructed, or natural catastrophes have damaged or destroyed the project facilities. The information collected under the designation FERC–510 is in the form of a written application for surrender of a hydropower license. The information is used by Commission staff to determine the broad impact of such surrender. The Commission will issue a notice soliciting comments from the public and other agencies and conduct a careful review of the prepared application before issuing an order for surrender of a license. The order is the result of an analysis of the information produced, *i.e.,* economic, environmental concerns, *etc.,* which are examined to determine if the application for surrender is warranted. The order implements the existing regulations and is inclusive for surrender of all types of hydropower licenses issued by FERC and its predecessor, the Federal Power Commission. The Commission implements these mandatory filing requirements in the Code of Federal Regulations (CFR) under 18 CFR 6.1–6.4.

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:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
16	1	10	160

Estimated cost burden to respondents is $10,952 (160 hours/2080 hours per year times $142,372 per year average per employee = $10,952 (rounded)). The estimated annual cost per respondent is $685 (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: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18557 Filed 7–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 8865–006 and 8865–007; Project Nos. 8866–006 and 8866–007]

N. Stanley Standal and Loretta M. Standal; Lynn E. Stevenson; Notice of Change in Docket Numbers

1. On March 18, 1986, the Commission issued two licenses to the Lynn E. Stevenson, one for Project No. 1, FERC Project No. 8865 [1] and the other for Project No. 2, FERC Project No. 8866.[2] Both projects are located on different unnamed tributaries to the Snake River in Gooding County, Idaho.

2. Several years later, Mr. Stevenson died and, on March 18, 2004, the Commission issued an Order Approving Transfer of License [3] for Project No. 2, FERC Project No. 8866 approving the transfer of license from the estate of Lynn E. Stevenson to N. Stanley and Loretta M. Standal. Shortly thereafter, on July 20, 2004, the Commission issued an Order Amending License [4] for Project No. 2, FERC Project No. 8866, for the replacement of the single 85 kW turbine/generator unit with three units totaling 70 kW. However, these orders misidentified the transferred and amended license as Project No. 2, FERC Project No. 8866, when the orders should have identified the project and license as Project No. 1, FERC Project No. 8865. The transfer of license and amendment orders were also incorrectly docketed as P–8866–006 and P–8866–007, respectively, when the orders should have been docketed as P–8865–006 and P–8865–007.

3. Accordingly, the Commission corrects the record in this notice by substituting Project No. 1, FERC Project No. 8865, instead of Project No. 2, FERC Project No. 8866, in the transfer and amendment orders. N. Stanley and Loretta M. Standal are correctly identified as the licensees for Project No. 1, FERC Project No. 8865 and Lynn E. Stevenson is still the license of record for Project No. 2, FERC Project No. 8866.

4. In order to correct the record based on this earlier misidentification, all filings and issuances since the filing of the transfer of license application, on November 12, 2003, made in P–8866 are moved into record for P–8865 and all filings made in P–8865 are moved in the record for P–8866.

[1] 34 FERC ¶ 62,531 (1986).

[2] 34 FERC ¶ 62,530 (1986).

[3] 106 FERC ¶ 62,212 (2004).

[4] 108 FERC ¶ 62,059 (2004).

Dated: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18558 Filed 7–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4047–000]

Invenergy Wind Development Michigan LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Invenergy Wind Development Michigan LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the

above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18556 Filed 7–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER11–4037–000]

Interstate Gas Supply, Inc.; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Interstate Gas Supply, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 8, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18555 Filed 7–21–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14064–000]

Amnor Hydro West Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On January 24, 2011, and supplemented on April 25, 2011, May 3, 2011, and July 6, 2011, Amnor Hydro West Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of the Horn Rapids Dam Hydropower Project (Horn Rapids Project or project). The proposed project is located on the Yakima River, near Richland, Benton County, Washington. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission. The proposed project would utilize an U.S. Army Corps of Engineers dam on the Yakima reservoir.

The proposed project would utilize the existing dam and outlet works. The applicant proposes the following new structures: (1) Two intake conduits connecting to a new powerhouse near the left end of the dam; (2) two axial turbine/generator units with a combined capacity of 1.4 megawatts; (3) a tailrace discharge works returning flows to the Yakima River; (4) a 14.7-kilovolt, 3,000-foot-long transmission line extending from the powerhouse south to a proposed substation; and (5) appurtenant facilities. The estimated annual generation of the project would be 6.5 gigawatt-hours.

Applicant Contact: Mr. Adam T. Supronik, 42 Pearsall Street, Staten Island, New York 10305; phone: (347) 415–9600.

FERC Contact: Patrick Murphy; *phone:* (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14064–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: July 18, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–18554 Filed 7–21–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2009–0694; FRL–9442–8]

Notice of Availability of the External Review Draft of the Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation; Extension of Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On June 9, 2011 the U.S. Environmental Protection Agency (EPA) announced the release of the External Review Draft of ''*Guidance for Applying Quantitative Data to Develop Data-Derived Extrapolation Factors for Interspecies and Intraspecies Extrapolation*'' for public comment (76 FR 33752–33753). With this notice EPA is announcing an extension of the comment period to August 9, 2011. EPA is releasing this draft document solely for the purpose of seeking public comment prior to external peer review. The document will undergo independent peer review during an expert peer review meeting, which will be convened, organized and conducted by an EPA contractor in 2011. The date of the external peer review meeting will be announced in a subsequent **Federal Register** notice. All comments received by the docket closing date, August 9, 2011, will be shared with the external peer review panel for their consideration. Comments received after the close of the comment period may be considered by EPA when it finalizes the document. This document has not been formally disseminated by EPA. This draft guidance does not represent and should not be construed to represent EPA policy viewpoint, or determination. Members of the public may obtain the draft interim guidance from *http://www.regulations.gov;* or *www.epa.gov/raf/DDEF/index.htm* or from Dr. Michael Broder via the contact information below.

DATES: All comments received by the docket closing date, August 9, 2011, will be shared with the external peer review panel for their consideration. Comments received beyond that time may be considered by EPA when it finalizes the document.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2009–0694, by one of the following methods:

Internet: http://www.regulations.gov: Follow the on-line instructions for submitting comments.

E-mail: ORD.Docket@epa.gov

Mail: Environmental Protection Agency, EPA Docket Center (EPA/DC), ORD Docket, Mailcode 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Hand Delivery: The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334, in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2009–0694. 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 the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected by statute through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Dr. Michael W. Broder at *telephone number:* (202) 564–3393; *fax:* (202) 564–2070; *e-mail address: broder.michael@epa.gov; mailing address:* Environmental Protection Agency, Office of the Science Advisor (8105R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

How can I access electronic copies of this document and other related information? In addition to using regulations.gov, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register** '' listings at *http://www.epa.gov/fedrgstr/.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the ORD Docket, EPA/DC, Public Reading Room. The EPA/DC Public Reading Room is located in the EPA Headquarters Library, Room Number 3334, in the EPA West Building, located at 1301 Constitution Avenue, NW., Washington, DC 20460. The hours of operation are 8:30 a.m. to 4:30 p.m. Eastern Time, Monday through Friday, excluding Federal holidays. Please call (202) 566–1744 or e-mail the ORD Docket at *ord.docket@epa.gov* for instructions. Updates to Public Reading Room access are available on the Web site (*http://www.epa.gov/epahome/dockets.htm*).

For questions on document availability, or if you do not have access to the Internet, consult Dr. Michael Broder listed under **FOR FURTHER INFORMATION CONTACT**.

What should I consider as I prepare my comments for EPA? You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data that you used to support your views.
4. Provide specific examples to illustrate your concerns and suggest alternatives.

5. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

SUPPLEMENTARY INFORMATION: This draft guidance document outlines approaches for developing factors for inter- and intra-species extrapolation based on data describing toxicokinetic and/or toxicodynamic properties of particular agent(s). It was developed to provide guidance for EPA staff in evaluating such data and/or information and to provide information to the regulated community and other interested parties about deriving and implementing extrapolation factors derived from data instead of defaults.

Dated: July 15, 2011.

Paul T. Anastas,

EPA Science Advisor.

[FR Doc. 2011–18569 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8998–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 07/10/2011 through 07/15/2011

Pursuant to 40 CFR 1506.9

Notice

In accordance with Section 309(a) of the Clean Air Act, EPA is required to make its comments on EISs issued by other Federal agencies public. Historically, EPA met this mandate by publishing weekly notices of availability of EPA comments, which includes a brief summary of EPA's comment letters, in the **Federal Register**. Since February 2008, EPA has included its comment letters on EISs on its Web site at: *http://www.epa.gov/compliance/nepa/eisdata.html.* Including the entire EIS comment letters on the Web site satisfies the Section 309(a) requirement to make EPA's comments on EISs available to the public. Accordingly, on March 31, 2010, EPA discontinued the publication of the notice of availability of EPA comments in the **Federal Register**.

IS No. 20110225, Final EIS, FHWA, TN, Interstate 55 Interchange at E.H. Crump Boulevard and South Boulevard Project, To Provide a Balanced Solution for Safety and Capacity Issues at the I55 Interchange, City of Memphis, Shelby County, TN, *Review Period Ends:* 08/15/2011, *Contact:* Charles J. O'Neill 615–781–5772.

EIS No. 20110226, Draft EIS, USFS, ID, Little Slate Project, Proposes Watershed Improvement, Timber Harvest, Fuel Treatments, Soil Restoration and Access Changes in the Little Slate Creek, Salmon River Ranger District, Nez Perce National Forest, Idaho County, ID, *Comment Period Ends:* 09/06/2011, *Contact:* Tammy Harding 208–935–4263.

EIS No. 20110227, Draft EIS, FWS, 00, NiSource Multi-Species Habitat Conservation Plan, Proposes to Use Adaptive Management to Ensure Flexibility to Adjust Operations to Benefit Species as New Information is Obtained, Application for Incidental Take Permit, Eastern United States, Comprising Portions of 14 States, *Comment Period Ends:* 10/11/2011, *Contact:* Lisa Mandell 612–713–5343.

EIS No. 20110228, Final EIS, FHWA, IN, I–69 Evansville to Indianapolis Tier 2 Section 4 Project, From U.S. 231 (Crane NSWC) to IN–37 South of Bloomington in Section 4, Greene and Monroe Counties, IN, *Review Period Ends:* 08/15/2011, *Contact:* Michelle Allen 317–226–7344.

EIS No. 20110229, Draft EIS, USFS, OR, Ogden Vegetation Management Project and Forest Plan Amendment, Proposes to Conduct Vegetation and Fuel Management Activities that will Protect, Maintain, and/or Enhance the Forests Natural Resources and Recreational Opportunities, Bend/Ft. Rock Ranger District, Deschutes National Forest, Deschutes County, OR, *Comment Period Ends:* 09/06/2011, *Contact:* Beth Peer 541–383–4769.

EIS No. 20110230, Draft EIS, USFS, OR, Marks Creek Allotment Management Plans, Proposes to Reauthorize Cattle Term Grazing Permits, Construct Range Improvements, and Restore Riparian Vegetation on three Allotments, Lookout Mountain Ranger District, Ochoco National Forest, Crook County, OR, *Comment Period Ends:* 09/06/2011, *Contact:* Marcy Anderson 541–416–6463.

EIS No. 20110231, Final EIS, BLM, NV, Salt Wells Energy Projects, Proposal for Three Separate Geothermal Energy and Transmission Projects, Implementation, Churchill County, NV, *Review Period Ends:* 08/15/2011, *Contact:* Colleen Sievers 775–885–6168.

EIS No. 20110232, Draft EIS, BLM, WY, Draft Visual Resource Management (VRM) Plan Amendment, Implementation, Carbon County, WY, *Comment Period Ends:* 10/19/2011, *Contact:* Pamela Murdock 307–328–4200.

EIS No. 20110233, Draft EIS, BLM, WY, Chokecherry and Sierra Madre Wind Energy Project, Proposes to Construct and Operate a Wind Energy Project, South of Rawlins, Carbon County, WY, *Comment Period Ends:* 10/19/2011, *Contact:* Pamela Murdock 307–328–4200.

EIS No. 20110234, Final EIS, FHWA, WI, US 41 Improvement Project, Extend from Depere—Suamico (Memorial Drive to County M), Brown County, WI, *Review Period Ends:* 08/15/2011, *Contact:* George Poirier 608–829–7500.

Amended Notices

EIS No. 20110215, Final EIS, FHWA, WI, Wisconsin Highway Project, Mobility Motorized and Nonmotorized Travel Enhancements, Updated Information on New Alternatives, and Evaluates a Staged Improvement, US18/151 (Verona Road) and the US 12/14 (Beltine) Corridors, Dane County, WI, *Review Period Ends:* 08/15/2011, *Contact:* George R. Poirier 608–829–7500 Revision to FR Notice Published 07/08/2011: Extending Review Period from 08/08/2011 to 08/15/2011.

EIS No. 20110223, Final EIS, FHWA, WA, Alaskan Way Viaduct Replacement Project, Between S. Royal Brougham Way and Roy Street, To Protect Public Safety and Provide Essential Vehicle Capacity to and through downtown Seattle, Updated Information to 2004 DEIS and 2006 DSEIS, Seattle, WA, *Wait Period Ends:* 08/15/2011, *Contact:* Angela Angove 206–805–2832.

Revision to FR Notice 07/15/2011: Correction to the Status from Second Final Supplement to Final.

Dated: July 19, 2011.

Cliff Rader,

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2011–18607 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9442–9]

Protection of Stratospheric Ozone: Request for Applications for Essential Use Allowances for 2013 and 2014

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is requesting applications for essential use allowances for calendar years 2013 and 2014. Essential use allowances provide exemptions from the phaseout of production and import of ozone-depleting substances. Essential use allowances must be authorized by the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer. The U.S. Government will use the applications received in response to this notice as the basis for its nomination of essential uses at the 24th Meeting of the Parties to the Protocol, to be held in 2012.

DATES: Applications for essential use allowances must be submitted to EPA no later than September 20, 2011 in order for the U.S. Government to complete its review and to submit nominations to the United Nations Environment Programme and the Protocol Parties in a timely manner.

ADDRESSES: Send application materials to: Jeremy Arling, Stratospheric Protection Division (6205J), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For applications sent via courier service, use the following direct mailing address: 1310 L Street, NW., Washington, DC 20005, Room 1047E.

Confidentiality: Application materials that are confidential should be submitted under separate cover and be clearly identified as ''trade secret,'' ''proprietary,'' or ''company confidential.'' Information covered by a claim of business confidentiality will be treated in accordance with the procedures for handling information claimed as confidential under 40 CFR part 2, subpart B, and will be disclosed only to the extent and by means of the procedures set forth in that subpart. Please note that data will be presented in aggregate form by the United States as part of the nomination to the Parties. If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Jeremy Arling at the above address, or by telephone at (202) 343–9055, by fax at (202) 343–2338, or by e-mail at *arling.jeremy@epa.gov.* Information about essential uses may be obtained from EPA's stratospheric protection Web site at *http://www.epa.gov/ozone/title6/exemptions/essential.html.*

SUPPLEMENTARY INFORMATION:

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I. Background on the Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Import of Class I Substances in 2013 and 2014

I. Background on the Essential Use Nomination Process

The Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other class I substances (under 40 CFR part 82, subpart A), except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing ''essential use'' exemptions from the phaseout of production and import of controlled substances. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25, paragraph 1(a), states that ''* * * a use of a controlled substance should qualify as 'essential' only if: (i) It is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health.'' In addition, the Parties agreed ''that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) All economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances * * *'' Decision XII/2 of the Twelfth Meeting of the Parties states that any CFC metered dose inhaler (MDI) product approved after December 31, 2000, is nonessential unless the product meets the criteria in Decision IV/25, paragraph 1(a).

The first step in obtaining essential use allowances is for the user to consider whether the use of the controlled substance meets the criteria of Decision IV/25. If the essential use request is for an MDI product, the user should also consider whether the product meets the criteria of Decision XII/2. In addition, the user should consult recent and ongoing rulemakings by the Food and Drug Administration (FDA) concerning the essential use determination of various MDI moieties. In particular, users should consider FDA's November 19, 2008, final rulemaking that removes the essential use designation for epinephrine used in MDIs as of December 31, 2011 (73 FR 69532). Users should also consider FDA's April 14, 2010, rulemaking that removes the essential use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in MDIs at various dates depending upon the inhaler (75 FR 19213).

Users requesting essential use allowances for calendar years 2013 and 2014 should send a completed application to EPA on the candidate use. The application should include information that U.S. Government agencies and the Parties to the Protocol can use to evaluate the candidate use according to the criteria in the Decisions described above.

Upon receipt of applications, EPA reviews the information and works with other interested Federal agencies to determine whether the candidate use meets the essential use criteria and warrants nomination by the United States for an exemption. In the case of multiple exemption requests for a single use, such as for MDIs, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review is to ensure that the aggregate request for a particular future year adequately reflects the total market need for CFC MDIs and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not account for such factors, the U.S. Government may adjust the aggregate request to better reflect true market needs.

Nominations submitted by the United States and other Parties are forwarded by the United Nations Ozone Secretariat to the Montreal Protocol's Technical and Economic Assessment Panel (TEAP) and its Medical Technical Options Committee (MTOC), which reviews the submissions and makes

recommendations to the Parties for essential use exemptions. The Parties then consider those recommendations at their annual meeting before making a final decision. If the Parties declare a specified use of a controlled substance as essential, and authorize an exemption from the Protocol's production and consumption phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Clean Air Act. Applicants should be aware that essential use exemptions granted to the United States under the Protocol in recent years have been limited to CFCs for MDIs to treat asthma and chronic obstructive pulmonary disease. Applicants should also be aware that the Parties last authorized an essential use exemption for United States in 2008 for the 2010 calendar year.

The Parties review nominations for essential use exemptions for the following year and subsequent years. This means that, if nominated, applications submitted in response to today's notice for an exemption in 2013 and 2014 will be considered by the Parties in 2012 for final action. The quantities of controlled substances that are requested in response to this notice, if approved by the Parties to the Montreal Protocol, will then be allocated as essential use allowances to the specific U.S. companies through notice-and-comment rulemaking, to the extent that such allocations are consistent with the Clean Air Act.

II. Information Required for Essential Use Applications for Production or Import of Class I Substances in 2013 and 2014

Through this action, EPA requests applications for essential use exemptions for all class I substances, except methyl bromide, for calendar years 2013 and 2014. This notice is the last opportunity to submit new or revised applications for 2013. This notice is also the first opportunity to submit requests for 2014. Companies will have an opportunity in 2012 to submit new, supplemental, or amended applications for 2014. All requests for exemptions submitted to EPA should present information as requested in the current version of the TEAP *Handbook on Essential Use Nominations,* which was updated in 2009. The handbook is available electronically on the Web at *http://ozone.unep.org/teap/Reports/TEAP_Reports/EUN-Handbook2009.pdf.*

In brief, the TEAP Handbook states that applicants should present information on:

- Role of use in society;
- Alternatives to use;
- Steps to minimize use;
- Recycling and stockpiling;
- Quantity of controlled substances requested; and
- Approval date and indications (for MDIs).

In addition, entities should address the following points to ensure that their applications are clear and complete. First, entities that request CFCs for multiple companies should clearly state the amount of CFCs requested for each company. Second, all essential use applications for CFCs should provide a breakdown of the quantity of CFCs necessary for each MDI product to be produced. This detailed breakdown will allow EPA and FDA to make informed decisions regarding the amount of CFCs to be nominated by the U.S. Government for the years 2013 and 2014. Third, all new drug application (NDA) holders for CFC MDI products produced in the United States should submit a complete application for essential use allowances either on their own or in conjunction with their contract filler. In the case where a contract filler produces a portion of an NDA holder's CFC MDIs, the contract filler and the NDA holder should determine the total amount of CFCs necessary to produce the NDA holder's entire product line of CFC MDIs. The NDA holder should provide an estimate of how the CFCs would be split between the contract filler and the NDA holder in the allocation year. This estimate will be used only as a basis for determining the nomination amount, and may be adjusted prior to allocation of essential use allowances. Since the U.S. Government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including comprehensive information pertaining to the research and development of alternative CFC MDI products per Decision VIII/10, para. 1 as specified in the Supplement to Nomination Request (pg. 46).

Finally, consistent with Decision XIX/13 taken in September 2007 at the 19th Meeting of the Parties, when requesting essential use CFCs for MDIs, applicants should provide the following information: (1) The company's commitment to the reformulation of the concerned products; (2) the timetable in which each reformulation process may be completed; and (3) evidence that the company is diligently seeking approval of any CFC-free alternative(s) in its domestic and export markets and transitioning those markets away from its CFC products.

The accounting framework matrix in the Handbook (Table IV) titled ''Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications'' requests data for the year 2011 on the amount of ODS exempted for an essential use, the amount acquired by production, the amount acquired by import and the country(s) of manufacture, the amount on hand at the start of the year, the amount available for use in 2011, the amount used for the essential use, the quantity contained in exported products, the amount destroyed, and the amount on hand at the end of 2011. Because all data necessary for applicants to complete Table IV will not be available until after the control period ends on December 31, 2011, companies should not include this chart with their essential use applications in response to this notice. Instead, companies should report their data as required by 40 CFR 82.13(u)(2) in Section 5 of the report titled ''Essential Use Allowance Holders and Laboratory Supplier Quarterly Report and Essential Use Allowance Holder Annual Report.'' This form may be found on EPA's Web site at *http://www.epa.gov/ozone/record/downloads/EssentialUse_ClassI.doc.* EPA will then compile each company's responses and complete the U.S. Accounting Framework for Essential Uses for submission to the Parties to the Montreal Protocol by the end of January 2012. EPA may also request additional information from companies to support the U.S. nomination using its information gathering authority under section 114 of the Act.

EPA anticipates that the Parties' review of MDI essential use requests will focus extensively on the United States' progress in phasing out CFC MDIs, including education programs to inform patients and health care providers of the CFC phaseout and the transition to alternatives. Accordingly, applicants are strongly advised to present detailed information on these educational programs, including the scope and cost of such efforts and the medical and patient organizations involved in the work. In addition, EPA expects that Parties will be interested in research and development activities being undertaken by MDI manufacturers to develop and transition to alternative CFC-free MDI products. To this end, applicants are encouraged to provide detailed information on these efforts. Applicants should submit their exemption requests to EPA as noted in the **ADDRESSES** section above.

The Office of Management and Budget (OMB) has approved the information

collection requirements contained in this notice under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0170.

Dated: July 18, 2011.

Elizabeth Craig,

Acting Director, Office of Atmospheric Programs.

[FR Doc. 2011–18573 Filed 7–21–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

July 15, 2011.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501—3520. 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 collection 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 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 currently valid OMB control number.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 22, 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to the Federal Communications Commission via e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page, (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: Leslie F. Smith, Office of Managing Director, (202) 418–0217. For additional information or copies of the information collection(s), contact Leslie F. Smith via e-mail at *PRA@fcc.gov* or call 202–418–0217.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0411.

Title: Procedures for Formal Complaints.

Form Number: FCC Form 485.

Type of Review: Revision of a currently approved collection.

Respondents: 20.

Number of Responses: 301.

Estimated Time per Response: 4.5 hours (average).

Frequency of Response: Recordkeeping; on occasion reporting requirements; and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151, 154(i), 154(j), 206, 207, 208, 209, 301, 303, 304, 309, 316, 332, and 1302.

Total Annual Burden: 1,349 hours.

Total Annual Cost: $1,847, 600.

Privacy Act Impact Assessment: As noted on OMB Form 83–I, the information collection requirements affect individuals or households. As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a, and OMB Memorandum m–03–22 (September 22, 2003), the FCC is complying with these requirements by: (1) Having published a system of records notice (SORN) in the **Federal Register** on December 14, 2010 (75 FR 77872) for a system of records, FCC/EB–5, ''Enforcement Bureau Activity Tracking System (EBATS).'' The SORN became effective on January 24, 2001; and (2) consolidating and updating Privacy Impact Assessment (PIA). Together these two documents will cover the collection, maintenance, use, and disposal of all personally identifiable information (PII) that may be submitted as part of any formal complaint(s) that are filed.

Nature and Extent of Confidentiality: 47 CFR 1.731 provides for confidential treatment of materials disclosed or exchanged during the course of formal complaint proceedings when those materials have been identified by the disclosing party as proprietary or confidential. In the rare case in which a producing party believes that section 1.731 will not provide adequate protection for its asserted confidential material, it may request either that the opposing party consent to greater protection, or that the staff supervising the proceeding order greater protection.

Needs and Uses: 47 CFR 1.731 provides for confidential treatment of materials disclosed or exchanged during the course of formal complaint proceedings when those materials have been identified by the disclosing party as proprietary or confidential. In the rare case in which a producing party believes that section 1.731 will not provide adequate protection for its asserted confidential material, it may request either that the opposing party consent to greater protection, or that the staff supervising the proceeding order greater protection.

Needs and Uses: The Commission is seeking a revision of collection 3060–0411, which relates to the filing of formal complaints with the Federal Communications Commission. The revision is necessitated by the adoption of a new data roaming rule (47 CFR 20.12(e)) contained in the *Second Report and Order,* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers and Other Providers of Mobile Data Services, WT Docket No. 05–265, FCC 11–52, that was adopted on April 7, 2011. The new data roaming rule requires commercial mobile data service providers to offer data roaming arrangements to other such providers on commercially reasonable terms and conditions, subject to certain limitations.

To resolve complaints between providers regarding compliance with data roaming obligations, the rule adopts by reference the procedures already in place for resolving formal complaints against common carriers,

except that the remedy of damages, which may be requested in complaints against common carriers, is not available for complaints against commercial mobile data service providers. Specifically, a party alleging a violation of 47 CFR 20.12(e) may file a formal or informal complaint pursuant to the procedures in 47 CFR 1.716–1.718, 1.720, 1.721, and 1.723–1.735.

Sections 206–209 of the Communications Act of 1934, as amended (the ''Act''), provide the statutory framework for the Commission's rules for resolving formal complaints against common carriers. Section 208(a) authorizes complaints by any person ''complaining of anything done or omitted to be done by any common carrier'' subject to the provisions of the Act. Section 208(a) states that if a carrier does not satisfy a complaint or there appears to be any reasonable ground for investigating the complaint, the Commission shall ''investigate the matters complained of in such manner and by such means as it shall deem proper.'' Certain categories of complaints are subject to a statutory deadline for resolution. *See, e.g.,* 47 U.S.C. 208(b)(1) (imposing a five-month deadline for complaints challenging the ''lawfulness of a charge, classification, regulation, or practice'').

Formal complaint proceedings before the Commission are similar to civil litigation in Federal district court. In fact, under section 207 of the Act, a party claiming to be damaged by a common carrier, may file its complaint with the Commission or in any district court of the United States, ''but such person shall not have the right to pursue both such remedies'' (47 U.S.C. 207). The Commission has promulgated rules (the ''Formal Complaint Rules'') to govern its formal complaint proceedings that are similar in many respects to the Federal Rules of Civil Procedure. *See* 47 CFR 1.720–1.736. These rules require the submission of information from the parties necessary to create a record on which the Commission can decide complex legal and factual issues. As described in section 1.720 of the Commission's rules, formal complaint proceedings are resolved on a written record consisting of a complaint, answer or response, and joint statement of stipulated facts, disputed facts and key legal issues, along with all associated affidavits, exhibits and other attachments.

This collection of information includes the process for submitting a formal complaint. The Commission uses this information to determine the sufficiency of complaints and to resolve the merits of disputes between the parties. Orders issued by the Commission in formal complaint proceedings are based upon evidence and argument produced by the parties in accordance with the Formal Complaint Rules. If the information were not collected, the Commission would not be able to resolve common carrier-related complaint proceedings, as required by section 208 of the Act, or the complaints against commercial mobile data service providers that will be critically important to ensure compliance with the data roaming rule, 47 CFR 20.12(e).

These complaint procedures (which are supported by the current collection 3060–0411) already apply to voice roaming complaints, and the Commission finds that it is in the public interest to ensure a consistent Commission process for resolving both voice and data roaming complaints. Moreover, some roaming disputes will involve both data and voice and are likely to have factual issues common to both types of roaming. Using the same process allows, but does not require, a party to bring a single proceeding to address such a dispute, rather than having to bifurcate the matter and initiate two separate proceedings under two different sets of procedures. This, in turn, will be more efficient for the parties involved, as well as for the Commission, and should result in faster resolution of such disputes.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18488 Filed 7–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Submitted for Review and Approval to the Office of Management and Budget

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 comment on the following information collections. 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 collection 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 22, 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: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov;* and to the Federal Communications Commission's PRA mailbox (e-mail address: *PRA@fcc.gov*). Include in the e-mail the OMB control number of the collection as shown in the **SUPPLEMENTARY INFORMATION** section below, or if there is no OMB control number, include the Title as shown in the **SUPPLEMENTARY INFORMATION** section. If you are unable to submit your comments by e-mail, contact the person listed below to make alternate arrangements.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-b.herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0410.

Title: Forecast of Investment Usage Report, FCC Form 495A, and Actual Usage of Investment Report, FCC Form 495B.

Form No.: FCC Reports 495A and 495B.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 70 respondents; 140 responses.

Estimated Time per Response: 40 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Mandatory—The ARMIS reporting requirements were established by the Commission in 1987 to facilitate the timely and efficient analysis of carrier operating costs and rates of return, to provide an improved basis for audits and other oversight functions, and to enhance the Commission's ability to quantify the effects of alternative policy proposals. Additional ARMIS Reports were added in 1991 and 1992. Incumbent local exchange carriers must submit the ARMIS reports to the Commission annually on or before April 1. See Reporting Requirements of Certain Class A and Tier I Telephone Companies (Parts 31, 43, 67 and 69 of the FCC's Rules), CC Docket No. 86182, Order, 2 FCC Rcd 5770 (1987), *modified on recon,* 3 FCC Rcd 6375 (1988); *see also* 47 CFR part 43, section 43.21.

Total Annual Burden: 5,600 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information addresses information of a confidential nature.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension of the previous OMB approval—no change in the reporting requirements.

The 495A Report provides the forecast and resulting investment allocation incorporated in a carrier's cost support for its access tariff. The 495B Report enables the Commission's staff to monitor actual and forecasted investment use, as directed in CC Docket 86–111. The ARMIS Reports 495A and 495B are filed at the study area (jurisdiction), consolidated access tariff area, and at the operating company level. These reports help ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers. This information is also a part of the data necessary to support the Commission's audit and other oversight functions. The data provide the necessary detail to enable the Commission to fulfill its regulatory responsibility. There are no changes to the ARMIS Reports 495A and 495B.

Although the Commission has granted conditional forbearance from FCC Reports 495A and 495B, the Commission still seeks continued OMB approval because petitions for reconsideration and review of those forbearance decisions are currently pending before the Commission and the courts, respectively. On April 24, 2008, the Commission in *Petition of AT&T Inc. for Forbearance under 47 U.S.C. § 160 from Enforcement of Certain of the Commission's Cost Assignment Rules,* WC Docket Nos. 07–21, 05–342, Memorandum Opinion and Order, 23 FCC Rcd 7302 (2008) (*AT&T Cost Assignment Forbearance Order*), *pet for recon. pending, pet. for review pending, NASUCA* v. *FCC,* Case No. 08–1226 (DC Cir. filed June 23, 2008) granted forbearance, subject to conditions, from the statutory provision and Commission rules as requested in the Legacy AT&T and Legacy BellSouth petitions (collectively, ''Cost Assignment Rules''). AT&T asked for and the Commission granted forbearance from four of the Commission's reporting requirements—the Access Report (ARMIS 43–04), the Rate of Return Monitoring Report (FCC Form 492), the Reg/Non-Reg Forecast Report (FCC Form 495A) and the Reg/Non-Reg Actual Usage Report (FCC Form 495B)—because forbearance from the Cost Assignment Rules renders these reports meaningless. The Commission had concluded that the various accounting rules were intended to work together to help ensure the primary statutory goal of just and reasonable rates. *See Separations of Costs of Regulated Telephone Service from Costs of Nonregulated Activities: Amendment of Part 31, the Uniform System of Accounts for Class A and Class B Telephone Companies to Provide for Nonregulated Activities and to Provide for Transactions Between Telephone Companies and their Affiliates,* CC Docket 86–111, Report and Order, 2 FCC Rcd 1298 (1987), *petition for review denied, Southwestern Bell Corp* v. *FCC,* 896 F. 2d 1378 (DC Cir. 1990).

In *Service Quality, Customer Satisfaction, Infrastructure and Operating Data Gathering,* WC Docket Nos. 08–190, 07–139, 07–204, 07–273, 07–21, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 23 FCC Rcd 13647 (2008) (*Verizon/Qwest Cost Assignment Forbearance Order*), *pet. for recon. pending, pet. for review pending,* NASUCA v. FCC, Case No. 08–1353 (DC Cir. filed Nov. 4, 2008) the Commission extended to Verizon and Qwest forbearance from the statutory provision and Commission rules from the Cost Assignment Rules to the same extend granted AT&T in the *AT&T Cost Assignment Forbearance Order* and subject to the same conditions.

OMB Control Number: 3060–0760.

Title: Access Charge Reform, CC Docket No. 96–262, First Report and Order; Second Order on Reconsideration and Memorandum Opinion and order; and Fifth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 17 respondents; 887 responses.

Estimated Time per Response: 3–300 hours.

Frequency of Response: On occasion and one time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 201–205 and 303(r).

Total Annual Burden: 28,835 hours.

Total Annual Cost: $736,760.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The information requested is not of a confidential nature. However, respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this comment period in order to obtain the full three year clearance from them. The Commission is requesting OMB approval for an extension of the previous OMB approval—no change in the reporting requirements.

The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap LECs receive pricing flexibility in the provision of interstate access services as competition for those services develops. Also, to ensure the equitable regulatory treatment of all providers of in-region, long distance service, Bell Operating Companies (BOCs) must now comply with the requirements to submit a certification to the Commission prior to providing contract tariff services to itself or to any affiliate that is neither a section 272 nor a rule section 64.1903 separate affiliate.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18489 Filed 7–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and Request for comments.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. 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 estimates; (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 collection burden on 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 September 20, 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: Direct all PRA comments to the Federal Communications Commission. To submit your PRA comments by e-mail send them to: *PRA@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-b.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0804.

Title: Universal Service—Rural Health Care Program/Rural Health Care Pilot Program.

Form Nos.: FCC Forms 465, 466, 466–A and 467.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents: 6,500 respondents; 48,895 responses.

Estimated Time per Response: .10 hours to 20 hours.

Frequency of Response: On occasion, one time, quarterly, monthly, and annual reporting requirements, recordkeeping requirement and third party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 151–154(i), 154(j), 201–205, 214, 254, and 403.

Total Annual Burden: 57,796 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. However respondents may request materials or information submitted to the Commission be withheld from public inspection under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: The Federal Communications Commission (hereinafter referred to as the Commission or FCC) seeks Office of Management and Budget (OMB) approval of a revision (change in reporting, recordkeeping, and/or third party disclosure requirements) of this information collection (IC) previously approved by OMB under this OMB Control Number 3060–0804. The purpose of the revision is to seek approval for eight templates, samples, and spreadsheets provided to program participants to facilitate the reporting record keeping and/or third party disclosure requirements under this collection. We have attached the eight items to this statement. These attachments include the following: (1) Attachment 1—Community Mental Health Center Verification Template; (2) Attachment 2—Invoice Template; (3) Attachment 3–FCC Form 465 Attachment Spreadsheet; (4) Attachment 4—Letter of Agency Template; (5) Attachment 5—Transfer of Letter of Agency; (6) Attachment 6—Network Cost Worksheet; (7) Attachment 7—Certification of Program Participant Template; and (8) Attachment 8—Vendor Certification Template.

In the Telecommunications Act of 1996 (1996 Act), Congress specifically sought to provide rural health care providers with ''an affordable rate for the services necessary for the provision of telemedicine and instruction relating to such services.'' In 1997, the Commission implemented this statutory directive by adopting the current Rural Health Care support mechanism, which is administered by the Universal Service Administrative Company (USAC). Since 1997, the Commission has made various modifications to the rural health care support mechanism. The Commission also revised its rules to expand funding for mobile rural health care services by subsidizing the difference between the rate for satellite service and the rate for an urban wireline service with a similar bandwidth. In addition, the Commission improved its administrative process by establishing a fixed deadline for applications for support. On reconsideration, the Commission permitted Rural health care providers in states that are entirely rural to receive support for advanced telecommunications and information services.

All RHC providers applying for discounts on eligible telecommunications and information services must file FCC Forms 465, 466 and/or 466–A, and 467. These forms and instructions were revised as a result of the Rural Health Care Second Report and Order, which required rural health care providers seeking discounts for mobile telecommunications services to submit various type(s) of information as detailed below (paragraphs A.1.(o). through A.1.(u). The forms were further modified in Month, 2009 in order to update the funding years and other minor administrative changes.

Despite the changes, the rural health care support mechanism had not fully achieved the benefits intended by the statute and the Commission. Generally, less than 10 percent of authorized funds were distributed each year.

In response to the underutilization of the rural health care support mechanism, the Commission released the 2006 Pilot Program Order, which established a Pilot Program to assist public and non-profit health care providers build state and region-wide broadband networks dedicated to the provision of health care services and connect those networks to a dedicated nationwide backbone. The construction of such networks will bring the benefits of innovative telehealth, and particularly, telemedicine services to those areas of the country where the

need for those benefits is most acute. By connecting to a dedicated national backbone, health care providers at the state and local levels will have the opportunity to benefit from advanced applications in continuing education and research. In addition, a ubiquitous nationwide broadband network dedicated to health care will enhance the health care community's ability to provide a rapid and coordinated response in the event of a public health crisis.

Participants in the Pilot Program are eligible to receive funding for up to 85 percent of the costs associated with: (1) The construction of a state or regional broadband network and the advanced telecommunications and information services provided over that network; (2) connecting nationwide backbones, Internet2 or National LambdaRail; and (3) connecting to the public Internet.

The Pilot Program lays the foundation for a future rulemaking proceeding that will explore permanent rules to enhance access to advanced services for public and non-profit health care providers. In particular, one of the goals of the Pilot Program is to provide the Commission with useful information as to the feasibility of revising the Commission's current rural health care mechanism rules in a manner that best achieves the objectives set forth by Congress. If successful, increasing broadband connectivity among health care providers at the national, state and local levels would also provide vital links for disaster preparedness and emergency response and would likely facilitate the President's goal of implementing electronic medical records nationwide.

In response to the Pilot Program, the Commission received 81 applications representing approximately 6,800 health care facilities from 43 states and three United States territories. In the Pilot Program Selection Order, the Commission selected 69 of the applicants that demonstrated the overall qualification consistent with the goals of the Pilot Program. As a result of the merger of certain projects, there are currently 62 participants in the Pilot Program. To minimize the burden on Pilot Program participants and to streamline the process, the Commission requires Pilot Program participants to follow the normal procedures and currently approved information collection requirements for participants in the existing rural health care support mechanism program. In the 2011 Pilot Program Extension Order, on delegated authority, the Wireline Competition Bureau (Bureau) extended by one year, to June 30, 2012, the deadline for participants in the Pilot Program to choose a vendor and request funding commitments from USAC. The Bureau also extended by one year the invoice deadline date for Pilot Program participants.

Under the current programs, to obtain discounted telecommunications services, entities seeking funding must file FCC Forms 465, 466 and/or 466–A, and 467. First, eligible entities file FCC Form 465 with USAC to make a bona fide request for supported services. Next, after a 28-day waiting period, an entity seeking funding submits FCC Form 466 and/or 466–A to indicate the type(s) and cost(s) of services ordered, information about the service provider, and the terms of the service agreement. Eligible entities must also certify on the FCC Forms 466 and 466–A that the entity has selected the most cost-effective method of providing the selected service(s). The final form eligible entities submit is FCC Form 467, which is used by the entity to notify USAC that the service provider has begun providing supported services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18490 Filed 7–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Communications Commission (FCC), as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act (PRA) of 1995. 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 collection burden on 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 control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before September 20, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to the Federal Communications Commission via e-mail to *PRA@fcc.gov* and *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0106.

Title: Part 43 Reporting Requirements for U.S. Providers of International Telecommunications Services and Affiliates; 47 CFR 43.61.

Form No.: N/A.

Type of Review: Revision of a previously approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 1,255 respondents and 1,255 responses.

Estimated Time per Response: 2 hours–220 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 1, 4(i), 4(j) 11, 201–205, 211, 214, 219, 220, 303(r), 309, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 161, 201–205, 211, 214, 219, 220, 303(r), 309 and 403.

Total Annual Burden: 19,530 hours.

Total Annual Cost: $339,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 12, 2011, the Federal Communications

Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011). In the First Report and Order portion of that document (First Report and Order), the Commission amended the international reporting requirements in Section 43.61 of the Commission's rules. The Commission retained the annual traffic and revenue report contained in Section 43.61(a) but eliminated the quarterly large carrier report in Section 43.61(b) and the quarterly report of switched resellers affiliated with foreign telecommunications entities in Section 43.61(c). The Commission also retained the requirement from the current Section 43.61(a) traffic and revenue report that filing entities report their international message telephone service (IMTS) and international private line services on a for each overseas route they serve. The Commission also retained the current requirement in Section 43.61(a) that filing entities report their IMTS resale (*i.e.,* where an entity purchases IMTS calls from another provider and resells them to its customers) on a world-total basis.

The First Report and Order simplified the annual Section 43.61(a) report by amending subpart (a) of the rule to eliminate the current requirement that filing entities separately report IMTS and private line traffic between the conterminous 48 states and offshore U.S. points such as Guam and the U.S. Virgin Islands and traffic between such offshore U.S. points and foreign points. The Commission did not amend subparts (1), (2), or (3) of Section 43.61(a).

OMB Control No.: 3060–0169.

Title: Section 43.51, Reports and Records of Communications Common Carriers and Affiliates.

Form No.: N/A.

Type of Review: Revision of a previously approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 55 respondents and 1,210 responses.

Estimated Time per Response: 6 hours.

Frequency of Response: On occasion reporting requirement, annual reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in sections: 1–4, 10, 11, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 160, 161, 201–205, 211, 218, 220, 226, 303(g), 303(r) and 332.

Total Annual Burden: 5,047 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 13, 2011, the Federal Communications Commission released a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011) (Part 43 Review Order). In the First Report and Order portion of the Part 43 Review Order (First Report and Order), the Commission removed section 43.53 as no longer being required in the public interest. It did not alter section 43.51.

OMB Control No.: 3060–0572.

Title: International Circuit Status Reports, 47 CFR 43.82.

Form No.: N/A.

Type of Review: Revision of a previously approved collection.

Respondents: Business or other for-profit entities.

Number of Responses and Respondents: 75 respondents and 75 responses.

Estimated Time per Response: 1 hour–50 hours.

Frequency of Response: Annual reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The Commission has authority for this information collection pursuant to the Communications Act of 1934 Sections 4, 48, 48 Stat. 1066, as amended, 47 U.S.C. 154 unless otherwise noted. Interpret or apply Sections 211, 219, 48 Stat. 1073, 1077, as amended; 47 U.S.C. 211, 219 and 220.

Total Annual Burden: 736 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general there is no need for confidentiality with this collection of information.

Needs and Uses: On May 12, 2011, the Federal Communications Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (FCC 11–76) in Reporting Requirements for U.S. Providers of International Telecommunications Services, Amendment of Part 43 of the Commission's Rules, IB Docket No. 04–112 (rel. May 13, 2011). In the First Report and Order portion of that document (First Report and Order), the Commission amended the international reporting requirements in Section 43.82 that requires carriers annually to report the status of the international transmission circuits they owned or leased on December 31st of the preceding year. In the First Report and Order, the Commission also eliminated the circuit-addition report in Section 63.23(e) of the Commission's rules.

In the First Report and Order, the Commission retained the annual circuit-status report contained in Section 43.82, but eliminated the requirement that filing entities separately report circuits between the conterminous 48 states and offshore U.S. points such as Guam and the U.S. Virgin Islands and circuits between such offshore U.S. points and foreign points.

In the First Report and Order, the Commission also removed the requirement that filing entities file the circuit-addition report in section 63.23(e) of the rules. The Commission found that the section 43.82 annual circuit-status report provides enough information so that the circuit-addition report is no longer necessary. Section 63.23(e) required carriers that have been certified to resell international private lines for the provision of telecommunications services to file each year the number of private line circuits they added and the service for which they were used. The Commission required this report because such service provider did not file the annual circuit-status report. The underlying carriers that provide the private lines that the resellers are using are required to report those circuits in their annual circuit-status report. As a result, we have a record that the circuits are used and do not need for the resellers also to report the same circuits.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–18491 Filed 7–21–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the

Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 18, 2011.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *Capital One Financial Corporation,* McLean, Virginia; to acquire 100 percent of the voting shares of ING Bank, FSB, Wilmington, Delaware, and indirectly acquire voting shares of Sharebuilder Advisors, LLC, and ING Direct Investing, Inc., both in Seattle, Washington, and thereby engage in operating a Federal savings bank, and investment financial advisory and securities brokerage service activities, pursuant to sections 225.28(b)(4)(ii), (b)(6)(i), and (b)(7)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, July 19, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–18530 Filed 7–21–11; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10380]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Rate Review Grants to States and Territories Cycle I and II Funding Opportunity Announcement Application and Reporting; *Use:* Under the Section 1003 of the Affordable Care Act (Section 2794 of the Public Health Service Act), the Secretary, in conjunction with the States and territories, is required to establish a process for the annual review, beginning with the 2010 plan year, of unreasonable increases in premiums for health insurance coverage. Section 2794(c) requires the Secretary to establish Premium Review Grants to States to assist States to implement this provision.

The U.S. Department of Health and Human Services (HHS) released the Rate Review Grants Cycle I funding opportunity twice; first to States (and the District of Columbia) in June 2010 and then to the territories and the five States that did not apply during the first release, (*http://www.hhs.gov/ociio/initiative/final_premium_review_grant_solicitation.pdf*). The second release was due to the decision that the territories were subject to provisions of the ACA and hence eligible for the Rate Review Grants. 46 States and 5 U.S. territories plus the District of Columbia were awarded grants. CCIIO is seeking to publish the Cycle II Funding Opportunity Announcement and associated grantee reporting requirements consisting of (4) quarterly reports, rate review transaction data (quarterly), (1) annual report per year, and (1) final report from all grantees. This information collection is required for effective monitoring of grantees and to fulfill statutory requirements under Section 2794(b)(1)(a) that requires grantees, as a condition of receiving a grant authorized under Section 2794(c), to report to The Secretary information about premium increases. *Form Number:* CMS–10380 (OCN: 0938–1121); *Frequency:* Annually, On Occasion; *Affected Public:* Public Sector: State and Territory Governments; *Number of Respondents:* 107; *Number of Responses:* 1,075; *Total Annual Hours:* 42,872. (For policy questions regarding this collection, contact Jacqueline Roche at 301–492–4171. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *August 22, 2011.*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer, *Fax Number:* (202) 395–6974, *E-mail: OIRA_submission@omb.eop.gov.*

Dated: July 15, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–18365 Filed 7–21–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10403]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send

comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Community-based Care Transitions Program (CCTP) Implementation and Monitoring; *Use:* The Medicare Community-Based Care Transitions Program (CCTP), authorized by Section 3026 of the 2010 Affordable Care Act, is a major component of the Partnership for Patients initiative, one goal of which is to decrease preventable complications during transition from a care setting, such as a hospital, to home, community, or another care setting. Appendix A contains a copy of the relevant portion of the legislation.

The CCTP will provide funding to test models for improving care transitions from the hospital to the community for high-risk Medicare beneficiaries. The Centers for Medicare & Medicaid Services (CMS) initiated the CCTP in early 2011 and will operate the program for five years. Congress has authorized $500 million to cover the cost of the program. CMS expects that program agreements will be in place to authorize community-based organizations (CBOs), in partnership with acute care hospitals, to begin providing care transition services in September 2011 and, if successful, continue doing so for up to five years. The planned collection of a participant experience survey is part of the implementation and monitoring strategy that will review the performance of organizations contracted to provide transitional care services under the CCTP. This clearance package seeks approval for the participant experience survey. *Form Number:* CMS–10403 (OMB # 0938–New); *Frequency:* Once; *Affected Public:* Individuals or Households; *Number of Respondents:* 50,000; *Total Annual Responses:* 50,000; *Total Annual Hours:* 12,500. (For policy questions regarding this collection contact Juliana Tiongson at 410–786–0342. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.gov/PaperworkReductionActof1995/PRAL/list.asp#TopOfPage* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office at 410–786–1326.

In commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *September 20, 2011:*

1. Electronically. You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. By regular mail. You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: July 15, 2011.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–18366 Filed 7–21–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1355–CN]

RIN 0938–AQ31

Medicare Program; Hospice Wage Index for Fiscal Year 2012; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of notice of CMS ruling.

SUMMARY: This document corrects technical errors that appeared in the notice of CMS ruling published in the **Federal Register** on May 9, 2011 entitled ''Hospice Wage Index for Fiscal Year 2012''.

DATES: *Effective Date:* This document is effective on May 9, 2011.

FOR FURTHER INFORMATION CONTACT: Lori Anderson, (410) 786–6190. Randy Throndset, (410) 786–0131.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–10694 of May 9, 2011 (76 FR 26731), there were technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the notice of CMS ruling published in the **Federal Register** on May 9, 2011. Accordingly, the corrections are effective May 9, 2011.

II. Summary of Errors

The title of the notice of CMS Ruling published in the **Federal Register** on May 9, 2011 (76 FR 26731) was incorrectly titled as ''Hospice Wage Index for Fiscal Year 2012''. We note that the title should have been ''Hospice Appeals for Review of an Overpayment Determination'', to coincide with the ruling posted on our CMS Web site on April 14, 2011. In addition, the effective date of the notice of CMS Ruling was incorrectly listed. We are correcting the date by changing it from ''April 14, 2011'' to ''May 9, 2011'', the date it was published in the **Federal Register**.

III. Correction of Errors

In FR Doc. 2011–10694 of May 9, 2011 (76 FR 26731), make the following corrections:

1. On page 26731, in the second column, in the heading, change the title of the notice of CMS ruling from ''Hospice Wage Index for Fiscal Year 2012'' to ''Hospice Appeals for Review of an Overpayment Determination''.

2. On page 26731, in the second column, under ''Dates: Effective Date:'' change the effective date from ''April 14, 2011'' to ''May 9, 2011''.

Therefore, for reasons noted below, we find good cause to waive proposed rulemaking and the 30 day delayed effective date for the technical corrections in this notice. This notice merely provides technical corrections to the title and the effective date of the Notice of CMS ruling that was published in the **Federal Register** on May 9, 2011, and does not make substantive changes to the notice or to the CMS Ruling. Specifically, this correction notice corrects the title of the notice of CMS ruling from ''Hospice Wage Index for Fiscal Year 2012'' to ''Hospice Appeals for Review of an Overpayment Determination,'' to conform the title of the notice of CMS ruling to the title of CMS Ruling 1355–R; it also corrects the effective date of the notice of CMS ruling from the date the Ruling was signed to the date the notice of CMS ruling was published in the **Federal Register**. Since this notice

merely makes technical corrections to the title and effective date of the Notice of CMS ruling, we believe it is unnecessary to undergo further notice and comment procedures. In addition, we believe it is in the public interest to have the correct information and to have it as soon as possible and not delay its dissemination. For the reasons stated above, we find that both notice and comment procedures and the 30-day delay in effective date for this correction document are unnecessary and contrary to the public interest. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction document.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 15, 2011.

Dawn L. Smalls,

Executive Secretary to the Department.

[FR Doc. 2011–18424 Filed 7–21–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3251–N]

Medicare Program; Meeting of the Medicare Evidence Development and Coverage Advisory Committee—September 21, 2011

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces that a public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) (''Committee'') will be held on Wednesday, September 21, 2011. The Committee generally provides advice and recommendations concerning the adequacy of scientific evidence needed to determine whether certain medical items and services can be covered under the Medicare statute. This meeting will focus on the currently available evidence regarding antivascular endothelial growth factor (anti-VEGF) treatment of diabetic macular edema (DME). This meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)).

DATES: *Meeting Date:* The public meeting will be held on Wednesday, September 21, 2011 from 7:30 a.m. until 4:30 p.m., Daylight Saving Time (D.S.T.).

Deadline for Submission of Written Comments: Written comments must be received at the address specified in the **ADDRESSES** section of this notice by 5 p.m. D.S.T., Monday, August 22, 2011. Once submitted, all comments are final.

Deadlines for Speaker Registration and Presentation Materials: The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation, is 5 p.m., D.S.T. on Monday, August 22, 2011. Speakers may register by phone or via e-mail by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the address specified in the **ADDRESSES** section of this notice.

Deadline for All Other Attendees Registration: Individuals may register online at *http://www.cms.gov/apps/events/upcomingevents.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by 5 p.m. D.S.T., Friday, September 16, 2011.

We will be broadcasting the meeting live via Webcast at *http://www.cms.gov/live/*.

Deadline for Submitting a Request for Special Accommodations: Persons attending the meeting who are hearing or visually impaired, or have a condition that requires special assistance or accommodations, are asked to contact the Executive Secretary as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5 p.m., D.S.T. Friday, September 2, 2011.

ADDRESSES: *Meeting Location:* The meeting will be held in the main auditorium of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244.

Submission of Presentations and Comments: Presentation materials and written comments that will be presented at the meeting must be submitted via e-mail to *MedCACpresentations@cms.hhs.gov* or by regular mail to the contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the date specified in the **DATES** section of this notice.

FOR FURTHER INFORMATION CONTACT: Maria Ellis, Executive Secretary for MEDCAC, Centers for Medicare & Medicaid Services, Office of Clinical Standards and Quality, Coverage and Analysis Group, S3–02–01, 7500 Security Boulevard, Baltimore, MD 21244 or contact Ms. Ellis by phone (410–786–0309) or via e-mail at *Maria.Ellis@cms.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), provides advice and recommendations to CMS regarding clinical issues. (For more information on MCAC, see the December 14, 1998 **Federal Register** (63 FR 68780).) This notice announces the September 21, 2011, public meeting of the Committee. During this meeting, the Committee will discuss the currently available evidence regarding antivascular endothelial growth factor (anti-VEGF) treatment of diabetic macular edema (DME). Background information about this topic, including panel materials, is available at *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. CMS will no longer be providing paper copies of the handouts for the meeting. Electronic copies of all the meeting materials will be on the CMS Web site no later than 2 business days before the meeting. We encourage the participation of appropriate organizations with expertise in the treatment of diabetic retinopathy (DR) and DME.

II. Meeting Format

This meeting is open to the public. The agenda for the day of the meeting offers two opportunities for the public to participate as either a registered scheduled speaker or an unscheduled speaker. The Committee will hear oral presentations from the registered scheduled speakers for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, CMS may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 25, 2011. Your comments should focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following Web site prior to the meeting: *http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&*. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or

their competitors) of any items or services being discussed.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute open public session for any unscheduled speaker to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

III. Registration Instructions

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at *http://www.cms.gov/apps/events/upcoming events.asp?strOrderBy=1&type=3* or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone, fax number(s), and e-mail address. You will receive a registration confirmation with instructions for your arrival at the CMS complex or you will be notified the seating capacity has been reached.

IV. Security, Building, and Parking Guidelines

This meeting will be held in a Federal government building; therefore, Federal security measures are applicable. We recommend that confirmed registrants arrive reasonably early, but no earlier than 45 minutes prior to the start of the meeting, to allow additional time to clear security. Security measures include the following:

- Presentation of government-issued photographic identification to the Federal Protective Service or Guard Service personnel.
- Inspection of vehicle's interior and exterior (this includes engine and trunk inspection) at the entrance to the grounds. Parking permits and instructions will be issued after the vehicle inspection.
- Inspection, via metal detector or other applicable means of all persons brought entering the building. We note that all items brought into CMS, whether personal or for the purpose of presentation or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for presentation or to support a presentation.

Note: Individuals who are not registered in advance will not be permitted to enter the building and will be unable to attend the meeting. The public may not enter the building earlier than 45 minutes prior to the convening of the meeting. All visitors must be escorted in areas other than the lower and first floor levels in the Central Building.

Authority: 5 U.S.C. App. 2, section 10(a).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 18, 2011.

Patrick Conway,

CMS Chief Medical Officer and Director, Office of Clinical Standards and Quality, Centers for Medicare & Medicaid Services.

[FR Doc. 2011–18562 Filed 7–21–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. FDA–2010–P–0577 and FDA–2010–P–0579]

Determination That NUVIGIL (Armodafinil) Tablets, 100 Milligrams and 200 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that NUVIGIL (armodafinil) Tablets, 100 milligrams (mg) and 200 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for armodafinil tablets, 100 mg and 200 mg, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: Molly Flannery, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6237, Silver Spring, MD 20993–0002, 301–796–3543.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, are the subject of NDA 21–875, held by Cephalon, Inc., and initially approved on June 15, 2007. NUVIGIL is indicated to improve wakefulness in patients with excessive sleepiness associated with obstructive sleep apnea, narcolepsy, and shift work disorder.

NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Actavis, Inc., submitted a citizen petition dated November 9, 2010 (Docket No. FDA–2010–P–0579), under 21 CFR 10.30, requesting that the Agency determine that NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, were not voluntarily withdrawn for safety or efficacy reasons. Watson Laboratories, Inc., also submitted a

citizen petition dated November 9, 2010 (Docket No. FDA–2010–P–0577), under 21 CFR 10.30, requesting that the Agency determine whether NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, were withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petitions and reviewing Agency records, FDA has determined under 314.161 that NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, were not withdrawn for reasons of safety or effectiveness. The petitioners have identified no data or other information suggesting that NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to NUVIGIL (armodafinil) Tablets, 100 mg and 200 mg, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 18 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18473 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0487]

Draft Guidance for Industry: Implementation of Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled ''Guidance for Industry: Implementation of Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma'' dated July 2011. The draft guidance document recognizes the standardized full-length and abbreviated donor history questionnaires and accompanying materials, version 1.0.1 dated December 2010, as an acceptable mechanism that is consistent with FDA's requirements and recommendations for collecting Source Plasma donor history information. The Plasma Protein Therapeutics Association (PPTA) Source Plasma donor history questionnaires and accompanying materials (SPDHQ documents) will provide blood establishments that collect Source Plasma with a specific process for administering questions to Source Plasma donors to determine their eligibility to donate.

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 October 20, 2011.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. 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: Tami Belouin, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled ''Guidance for Industry: Implementation of Acceptable Full-Length and Abbreviated Donor History Questionnaires and Accompanying Materials for Use in Screening Donors of Source Plasma'' dated July 2011. The draft guidance document recognizes the standardized full-length and abbreviated donor history questionnaires and accompanying materials, version 1.0.1 dated December 2010, prepared by the PPTA, as an acceptable mechanism that is consistent with FDA's requirements and recommendations for collecting Source Plasma donor history information. The SPDHQ documents will provide blood establishments that collect Source Plasma with a specific process for administering questions to Source Plasma donors to determine their eligibility to donate. The guidance also advises Source Plasma manufacturers who choose to implement the acceptable SPDHQ documents on how to report the manufacturing change consisting of the implementation of the SPDHQ under 21 CFR 601.12.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA'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 requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under

the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 601.12 have been approved under OMB Control No. 0910–0338; 21 CFR 640.63 have been approved under OMB Control No. 0910–0116.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. 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/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: July 18 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18472 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0381]

Generic Drug User Fee; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting to provide a public update and to gather additional stakeholder input on the development of a generic drug user fee program. A user fee program could provide necessary supplemental funding, in addition to current Congressional appropriations, to facilitate the timely review of human generic drug applications by FDA. FDA has been in negotiations with the regulated industry aimed at providing a consensus proposal for Congressional consideration. In the interest of transparency, and to assure that all interested stakeholders' views are heard and considered, whether they are present at the negotiations or not, FDA is holding a fourth public meeting on this topic to provide an update and to gather additional input on such a program.

Date and Time: The public meeting will be held on August 25, 2011, from 2 to 3:30 p.m.

Location: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 1, Conference Rooms 4101, 4103, and 4105, Silver Spring, MD 20993–0002.

Contact Person: Mari Long, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4237, Silver Spring, MD 20993–0002, 301–796–7574, FAX 301–847–3541, *mari.long@fda.hhs.gov;* or

Peter C. Beckerman, Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 4238, Silver Spring, MD 20993–0002, 301–796–4830, FAX 301–847–3541, *peter.beckerman@fda.hhs.gov.*

Registration and Requests for Oral Presentations: If you wish to attend and/or present at the meeting, please e-mail your registration information to *GDUFA_Meeting3@fda.hhs.gov* by August 18, 2011. Your e-mail should contain complete contact information for each attendee, including name, title, affiliation, address, e-mail address, and telephone number. Registration is free and will be on a first-come, first-served basis. Early registration is recommended because seating is limited. FDA may limit the number of participants from each organization as well as the total number of participants, based on space limitations. Registrants will receive confirmation once they have been accepted. Onsite registration on the day of the meeting will be based on space availability. We will try to accommodate all persons who wish to make a presentation. The time allotted for presentations may depend on the number of persons who wish to speak, and if the entire meeting time is not needed for presentations, FDA reserves the right to terminate the meeting early.

If you need special accommodations because of disability, please contact Mari Long or Peter Beckerman (see *Contact Person*) at least 7 days before the meeting.

Comments: Regardless of attendance at the public meeting, interested persons may submit either electronic or written comments regarding this document. To ensure consideration, all comments must be received by September 26, 2011. Submission of comments prior to the meeting is strongly encouraged. Submit any comments that you plan to present at the public meeting to the docket by the date of the public meeting, but note that either electronic or written comments generally may be submitted until September 26, 2011.

Submit electronic comments 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. 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.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intention to hold a public meeting related to generic drug user fees. New legislation would be required for FDA to establish and collect user fees for generic drugs, and FDA has been engaged in negotiations with industry over aspects of a joint proposal for a generic drug user fee program, including fees and performance goals, for several months. The Agency has held three prior public meetings on the topic before and during this process. Because FDA can only negotiate with trade organizations, not individual companies, but remains interested in hearing from non-affiliated companies in addition to patient and consumer stakeholders, the Agency is holding an additional public meeting. The meeting will provide a status update and seek input from stakeholders on generic drug user fees. In addition, FDA continues to encourage all interested stakeholders to submit either electronic or written comments to the docket (see *Comments*).

II. What information should you know about the public meeting, when and where will the public meeting occur, and what format will FDA use?

Through this notice, we are announcing a public meeting to update stakeholders and hear stakeholder views on what features FDA should propose for a generic drug user fee program. We will conduct the meeting on August 25, 2011, from 2 to 3:30 p.m. at FDA's White Oak Campus, 10903 New Hampshire Ave., Bldg. 1, Conference Rooms 4101, 4103, and 4105, Silver Spring, MD 20993–0002. In general, the

meeting format will include a presentation by FDA and presentations by stakeholders and members of the public who have registered in advance to present at the meeting. The amount of time available for presentations will be determined by the number of people who register to make a presentation. We will also provide an opportunity for organizations and individuals to submit either electronic or written comments to the docket after the meeting (see *Comments*). FDA policy issues are beyond the scope of this initiative. Accordingly, the presentations should focus on process and funding issues, and not focus on policy.

Dated: July 19, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18591 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Thirteenth International Paul-Ehrlich-Seminar: Allergen Products for Diagnosis and Therapy: Regulation and Science; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), Center for Biologics Evaluation and Research (CBER), in cosponsorship with the Paul-Ehrlich-Institut (PEI), and the Drug Information Association (DIA), is announcing a public workshop entitled: ''13th International Paul-Ehrlich-Seminar: Allergen Products for Diagnosis and Therapy: Regulation and Science.'' The purpose of the public workshop is to bring together scientists, clinicians, and regulators from throughout the world to discuss the regulation of allergenic products with respect to their use for the diagnosis and treatment of allergenic diseases and asthma. The public workshop will provide a forum for scientists, clinicians, and regulators to discuss natural and modified allergens as they relate to the pathogenesis, diagnosis, and treatment of allergic diseases.

Dates and Times: See the following table 1.

TABLE 1—WORKSHOP SCHEDULE

Dates	Registration times	Public workshop hours
September 14, 2011	3 p.m. to 6 p.m	7:30 p.m. to 9 p.m. (keynote session).
September 15, 2011	7 a.m. to 8:30 a.m	8:30 a.m. to 5 p.m.
September 16, 2011	None	8:30 a.m. to 6 p.m.
September 17, 2011	None	8:45 a.m. to 12:30 p.m.

Location: The public workshop will be held at the Hyatt Regency Washington on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. Overnight accommodations can be booked at the Hyatt Regency Washington on Capitol Hill, under group code ''DIA event''. Reduced rates are available until August 24, 2011. For the public workshop rate, call 1–800–243–2546 or go to the Web site at *http://washingtonregency.hyatt.com/hyatt/hotels/*. (FDA has verified the Web site addresses throughout this document, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

Contact Person: Sandra Menzies, Center for Biologics Evaluation and Research (HFM–422), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–3181, FAX: 301–402–2776; e-mail: *Sandra.menzies@fda.hhs.gov* (in the subject line, type ''13th IPES''.)

Registration: Registration will be handled directly by DIA. Registration fees apply to all attendees. Registration will be accepted by mail, fax, or online. Register online at *http://www.diahome.org.* For mailing or faxing registration information, see the Web site at: *http://www.diahome.org/DIAHome/Education/FindEducationalOffering.aspx?productID=25839&eventType=Meeting.* Early registration is recommended because seating is limited. Registration at the public workshop will be provided on a space-available basis.

If you need special accommodations due to a disability, please contact DIA at least 15 days prior to the start of the public workshop at 215–293–5800; FAX: 215–442–6199; or e-mail *Constance.Burnett@diahome.org* or *JoAnn.Boileau@diahome.org.*

Continuing Education: This activity has been planned and implemented in accordance with the essential areas and policies of the Accreditation Council for Continuing Medical Education (ACCME) through the joint sponsorship of Postgraduate Institute for Medicine (PIM) and the DIA. PIM is accredited by the ACCME to provide continuing medical education for physicians. PIM designates this educational activity for a maximum of 17.75 American Medical Association Physician's Recognition Ward (AMA PRA) Category 1 Credit(s).™ Physicians should only claim credit commensurate with the extent of their participation in the activity. DIA has been approved as an Authorized Provider by the International Association for Continuing Education and Training (IACET), 8405 Greensboro Dr., suite 800, McLean, VA 22102; 703–506–3275. DIA is authorized by IACET to offer 1.8 continuing education units for this program.

SUPPLEMENTARY INFORMATION: For about 30 years, the International Paul-Ehrlich-Seminar has been a forum for regulators, scientists, and industry to discuss issues related to standardization and regulation of diagnostic and therapeutic allergenic products. The public workshop will consist of a series of seminars and discussions focused on standardization of allergens, including biochemical characterization, their mechanism of action as therapeutics, and ongoing and recently completed clinical trials as to safety and efficacy of a number of allergenic products as therapeutics.

FDA protects and advances the public health by approving biological products that it determines meets the requirements for safety, purity, and potency for the conditions for which the applicant is seeking approval, based on factors that include a review of data and, in some cases, taking into account recommendations and input from independent experts (*e.g.,* advisory committees), input from interested parties, and public comments.

PEI is an institution of the Federal Republic of Germany. PEI reports to the Bundesministerium für Gesundheit (Federal Ministry of Health). Most of its activities relate to provisions in German and European medicinal product legislation, such as the approval of clinical trials and the marketing authorization of particular groups of medicinal products. Since its foundation more than 100 years ago, PEI has concentrated on many biological medicinal products, including vaccines for humans and animals, medicinal products containing antibodies, allergens for therapy and diagnostics, blood and blood products, and more recently, tissue and medicinal products for gene therapy, somatic cell therapy, and xenogenic cell therapy.

DIA is a nonprofit, multidisciplinary, member-driven scientific association with a membership of over 22,000. These members are primarily from the regulatory Agencies, academia, contract service organizations, pharmaceutical, biological and device industry, and from other health care organizations. DIA provides a neutral global forum for the exchange and dissemination of knowledge on the discovery, development, evaluation, and utilization of medicines and related health care technologies. Through these activities, DIA provides development opportunities for its members.

The public workshop will feature presentations by FDA and regulators from Canada, China, Europe, and Mexico. The public workshop will begin with a keynote address by Harold S. Nelson and end with a closing address by N. Franklin Adkinson, Jr. During the public workshop, the following topics will be discussed:

- Standardization and characterization of natural allergenic products;
- Methods in product and study design of effective allergenic products for therapy;
- Standardization and characterization of modified and recombinant allergenic products;
- Immunological mechanisms of allergy immunotherapy;
- Immunotherapy with purified allergen components;
- Extrinsic adjuvants in the use of allergen immunotherapy;
- Immunomodulatory properties of allergens; and
- State-of-the-art of immunotherapy in different allergic diseases.

DIA will provide all seminar attendees with a Web link no later than 4 weeks post-seminar. The Web link will provide access to approved Portable Document Format (PDF) presentations. The Web link will be available for approximately 6 months postseminar.

Dated: July 19, 2011.

David Dorsey,

Acting Deputy Commissioner for Policy, Planning and Budget.

[FR Doc. 2011–18534 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 20, 2011, from 8 a.m. to approximately 5:15 p.m.

Location: Hilton Hotel, Washington DC North/Gaithersburg, 620 Perry Pkwy., Gaithersburg, MD 20977, 301–977–8900. For those unable to attend in person, the meeting will also be Web cast. The link for the Web cast is available at *http://fda.yorkcast.com/webcast/Viewer/?peid=84f95996804743439bcc5be69d1908051d.*

Contact Person: Donald W. Jehn or Denise Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On September 20, 2011, the committee will meet in open session to hear an overview of the research program in the Laboratory of Enteric and Sexually Transmitted Diseases, Division of Bacterial, Parasitic and Allergenic Products, Office of Vaccines Research and Review, Center for Biologics Evaluation and Research, FDA. The committee will then discuss and make recommendations on the safety and immunogenicity (surrogate endpoint) of Pneumococcal 13-valent conjugate vaccine (Diphtheria CRM197 Protein) in adults aged 50 years and older using an accelerated approval regulatory pathway.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: On September 20, 2011, between approximately 8 a.m. and 10 a.m., and between approximately 10:45 a.m. and 5:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before September 13, 2011. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m. and between approximately 3:45 p.m. and 4:15 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 1, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons

regarding their request to speak by September 2, 2011.

Closed Committee Deliberations: On September 20, 2011, between approximately 10:15 a.m. and 10:45 a.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the report of the intramural research programs and make recommendations regarding personnel staffing decisions.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Donald W. Jehn or Denise Royster at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–18506 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0002]

Risk Communication Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Risk Communication Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 15, 2011, from 8 a.m. to 5 p.m. and August 16, 2011, from 8 a.m. to 2 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You'', click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Lee L. Zwanziger, Office of Policy, Planning and Budget, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3278, Silver Spring, MD 20993, 301–796–9151, FAX: 301–847–8611, *e-mail: RCAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), and follow the prompts to the desired center or product area. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On August 15, 2011, the Committee will discuss challenges of communicating about evolving methodology in the attribution of foodborne illness. Estimating the number of illnesses, hospitalizations, and deaths caused by major pathogens is the first step in the development of disease prevention strategies. Estimating the proportions of these illnesses due to specific food sources (food source attribution) is a necessary second step towards identifying the sources that cause substantial preventable human illness and measuring progress toward public health goals resulting from public health interventions applied to those food sources. Consequently, FDA, the Centers for Disease Control and Prevention, and the U.S. Department of Agriculture/Food Safety Inspection Service have begun a joint initiative, called the Interagency Food Safety Analytics Collaboration (IFSAC), to improve our collective understanding of source attribution of infections to specific foods and settings. While the IFSAC works to improve methodology, we are also committed to keeping stakeholders informed and engaged, and are seeking advice about how to communicate most effectively. On August 16, 2011, the Committee will present ''Communicating Risks and Benefits: An Evidence-Based User's Guide.'' This volume is the result of work, as discussed in previous meetings, by current and former members of the Risk Communication Advisory Committee.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before August 10, 2011. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on August 15, 2011, and 10:30 a.m. and 11:30 a.m. on August 16, 2011. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before August 2, 2011. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 3, 2011. Interested persons can also log on to *https://collaboration.fda.gov/rcac/* to hear and see the proceedings.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical

disabilities or special needs. If you require special accommodations due to a disability, please contact Lee L. Zwanziger at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: July 18, 2011.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2011–18507 Filed 7–21–11; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of Agency functions; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) the ways to enhance quality, utility, and clarity of the information to be collected; and (d) the ways to minimize the burden of the collection of information on respondents, through the use of automated collection techniques or other forms of information technology.

Proposed Project: ADAP Data Report—[NEW]

HRSA's AIDS Drug Assistance Program (ADAP) is funded through The Ryan White HIV/AIDS Program, Part B, Title XXVI of the Public Health Service Act, which provides grants to states and territories. ADAP provides medications for the treatment of HIV/AIDS. Program funds may also be used to purchase health insurance for eligible clients and for services that enhance access, adherence, and monitoring of drug treatments.

Each of the 50 states, the District of Columbia, Puerto Rico, and several territories receive ADAP grants. As part of the funding requirements, ADAP grantees currently submit quarterly reports concerning aggregate information on patients served, pharmaceuticals prescribed, pricing, as well as other sources of support to provide AIDS medication treatment, eligibility requirements, cost data, and coordination with Medicaid; however, aggregate data cannot be analyzed with the detail that is required to assess quality of care or to sufficiently account for the use of Ryan White HIV/AIDS Program Funds.

To address this limitation, HRSA's HIV/AIDS Bureau (HAB) is developing a client-level data system for ADAP grantees called the ADAP Data Report (ADR). The ADR consists of a grantee report and a client-level data file that will be submitted once every six months. Data collected through the ADR: Will enable HAB to answer specific questions about the utility of ADAP; will more precisely address program needs; and will monitor program performance.

Discussions were held with nine volunteer grantee agencies representing a variety of ADAP models, as a basis for the burden estimates for the ADR that are included. These burden estimates are presented in two tables. The first table represents the estimated burden for the first year, including the estimated time to adjust existing or develop new data collection systems to collect the elements that HAB is requesting. In the first year, grantees will be required to report the grantee and client reports twice. Therefore, the total number of grantees (57) is multiplied by the total number of times that each grantee must submit the specified report (2) to arrive at the total responses in a one year period (114). This total is multiplied by the number of hours to complete each report for each six month submission to calculate the total burden hours.

TABLE 1—ESTIMATE OF BURDEN FOR THE FIRST YEAR

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Grantee Report	57	2	114	12.50	1,425.00
Client Report	57	2	114	34.19	3,897.66
Data Collection System	57	1	57	826.00	47,082.00
Total					52,404.66

The second table represents the estimated burden for subsequent years. Given that data collection system updates only impact the first six month reporting period, it is not included in the subsequent years' total burden. The grantee report burden remains unchanged, as the submission is consistent with current reporting requirements. The client report burden will decrease slightly in subsequent years as grantees become more proficient with reporting client level data, based on feedback they receive, as well as technical assistance resources that HRSA will provide.

TABLE 2—ESTIMATE OF BURDEN FOR SUBSEQUENT YEARS

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Grantee Report	57	2	114	12.50	1,425.00
Client Report	57	2	114	24.00	2,736.00
Total					4,161.00

E-mail comments to *paperwork@hrsa.gov* or mail the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: July 15, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–18477 Filed 7–21–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Supplemental Information Request for the Submission of the Updated State Plan for the Home Visiting Program (OMB No. 0915–0336)—[Extension]

On March 23, 2010, the President signed into law the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), historic and transformative legislation designed to enhance disease prevention, strengthen the health care workforce, and make quality, affordable health care available to all Americans. Through a provision authorizing the creation of the Maternal, Infant, and Early Childhood Home Visiting Program, (*http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590enr.txt.pdf,* pages 216–225), the Act responds to the diverse needs of children and families in communities at risk and provides an unprecedented opportunity for collaboration and partnership at the federal, state, and community levels to improve health and development outcomes for at-risk children through evidence-based home visiting programs.

The Maternal, Infant, and Early Childhood Home Visiting (MIECHV) Program is designed: (1) To strengthen and improve the programs and activities carried out under Title V; (2) to improve coordination of services for at-risk communities; and (3) to identify and provide comprehensive services to improve outcomes for families who reside in at-risk communities.

To achieve the legislative requirements of the MIECHV program, the following application steps were required for release of grant funding:

The first step was submission of an application for funding: The HRSA Funding Opportunity Announcement (FOA), HRSA–10–275, was issued on June 10, 2010, and state applications were due to HRSA on July 9, 2010. These applications were to include plans for completing the required statewide needs assessment to identify at-risk communities, submission of which was also a condition for receiving FY 2011 Title V Block Grant allotments (the completed needs assessments were due in September 2010) and initial State plans for developing the program in order to meet the criteria identified in the legislation (Section 511(b)(3)(B)). The second step was submission of a statewide needs assessment. On September 20, 2010, all 50 states, the District of Columbia, and five U.S. territories submitted needs assessments, which were approved by HRSA, and all 56 grantees have therefore received FY 2011 Title V Block Grant funds. The third step, as a condition of receiving the remaining grant funding, was submission of an Updated State Plan for a State Home Visiting Program.

The information requested for the Updated State Plan is intended to help states in achieving the MIECHV Program requirements by viewing their proposed State Home Visiting Program as a service strategy aimed at developing a comprehensive, high-quality early childhood system that promotes maternal, infant, and early childhood health, safety and development, and strong parent-child relationships in the targeted community(ies) at risk. Ultimately, the information provided will help states develop a comprehensive plan that addresses community risk factors, builds on strengths identified in the targeted community(ies), and responds to the specific characteristics and needs of families in each of these communities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Section 1: Identification of the State's Targeted At-Risk Community(ies)	56	1	56	30	1,680
Section 2: State Home Visiting Program Goals and Objectives	56	1	56	30	1,680

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
Section 3: Selection of Proposed Home Visiting Model(s) and Explanation of How the Model(s) Meet the Needs of Targeted Community(ies)	56	1	56	30	1,680
Section 4: Implementation Plan for Proposed State Home Visiting Program	56	1	56	60	3,360
Section 5: Plan for Meeting Legislatively-Mandated Benchmarks	56	1	56	60	3,360
Section 6: Plan for Administration of State Home Visiting Program	56	1	56	40	2,240
Section 7: Plan for Continuous Quality Improvement	56	1	56	20	1,120
Section 8: Technical Assistance Needs	56	1	56	1	56
Total	56				15,176

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by e-mail to *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: July 19, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–18596 Filed 7–21–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Generic Clearance for Partners and Customer Satisfaction Surveys

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the Center for Scientific Review (CSR), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget for review and approval.

Proposed Collection: Title: Generic Clearance for Voluntary Partners and Customers Satisfaction Surveys: *Extension.*

The information collected in these surveys will be used by the Center for Scientific Review management and personnel: (1) To assess the quality of the modified operations and processes now used by CSR to review grant applications; (2) To assess the quality of service provided by CSR to our customers; (3) To enable identification of the most promising biomedical research that will have the greatest impact on improving public health by using a peer review process that is fair, unbiased from outside influence, timely, and (4) To develop new modes of operation based on customer need and customer feedback about the efficacy of implemented modifications. These surveys, which will be both quantitative and qualitative, are designed to assess the quality of services we provide to our major external customers. Customers include the research scientists who submit applications for grant funding to NIH. Those grant applications are reviewed and ranked by the grant scientific peer review study groups' members and chairs. These surveys will almost certainly lead to quality improvement activities that will enhance and/or streamline CSR's operations. Our partners include current grant scientific peer review study groups' members and chairs.

Frequency of Response: On occasion.

Affected Public: Scientific peer review study groups' members and chairs, grant applicants, other members of the research community.

Type of Respondents: Adult scientific professionals.

ESTIMATES OF ANNUALIZED HOUR BURDEN

[totals rounded off to the nearest hour]

Type of respondent	Number of respondents	Frequency of response	Average time per response (hr)	Total annual hour burden
Adult scientific professionals (via Mail/Telephone/Internet)	5000	1	0.25	1250
Adult scientific professional (via focus groups)	75	1	1	188
Total	5075	1		1438

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points:

(1) Whether the proposed collection of information is necessary for the proper performance of the function 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.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and

instruments, contact George Chacko, PhD. Center for Scientific Review, NIH, Room 3030, 6701 Rockledge Drive, Bethesda, MD 20892–7776, or call non-toll-free number 301–435–1133 or e-mail your request, including your address to: *chackoge@csr.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of publication of the notice.

Dated: July 18, 2011.

George Chacko,

Director of Planning, Analysis, and Evaluation, Center for Scientific Review, National Institutes of Health.

[FR Doc. 2011–18617 Filed 7–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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 Cancer Institute Special Emphasis Panel, Childhood Cancer Survivor Study.

Date: July 28, 2011.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, Room 706, Rockville, MD 20852, (Teleconference).

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 18, 2011.

Anna P. Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–18566 Filed 7–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Announcement of Requirements and Registration for Using Public Data for Cancer Prevention and Control: From Innovation to Impact Developer Challenge

AGENCY: National Cancer Institute, National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI), Division of Cancer Control and Population Sciences (DCCPS), is announcing the launch of the *Using Public Data for Cancer Prevention and Control: From Innovation to Impact Developer Challenge.* This Challenge is sponsored by the NCI and is presented as part of the Office of the National Coordinator for Health Information Technology's Investing in Innovation (i2) program. This contest addresses the NCI DCCPS mission to disseminate information towards the prevention, early detection, diagnosis, and treatment and control of cancer. Specifically, the contest supports the detection, diagnosis, prevention, and treatment of cancer through the demonstration of new methods for the dissemination of information to the general public concerning the prevention, early detection, diagnosis, and treatment and control of cancer.

DATES: Important dates concerning the two phases of the Challenge include the following:

Phase I

Submission Period Begins: 12:01 a.m., EDT, July 20, 2011.

Submission Period for Initial Entries Ends: 11:59 p.m., EDT, August 26, 2011.

Judging Process for Finalists Begins: 12:01 a.m., EDT, August 27, 2011.

Judging Process for Finalists Ends: 11:59 p.m., EDT, September 1, 2011.

Finalist(s) notified: September 2, 2011.

Finalist Demos at Health 2.0 Conference: September 25–27, 2011.

Phase II

Final Submission Period Begins: 12:01 a.m., EDT, October 3, 2011.

Final Submission Period Ends: 11:59 p.m., EST, November 18, 2011.

Final Judging Process Begins: 12:01 a.m., EST, November 19, 2011.

Final Judging Process Ends: 11:59 p.m., EST, November 25, 2011.

Winner(s) notified: November 30, 2011.

Award Presentation at Hawaii International Conference on System Sciences (HICSS) Symposium: January 4, 2012.

FOR FURTHER INFORMATION CONTACT: Abdul R. Shaikh, PhD, MHSc, Program Director, Health Communication and Informatics Research Branch, BRP, DCCPS, National Cancer Institute, Phone: 301–594–6690.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants are asked to develop software applications (apps) that utilize the wide array of health-related data made available by the NCI DCCPS and other Federal agencies for innovative consumer health apps; these apps should potentially integrate with existing technology platforms and address targets comprising DCCPS priority areas on the continuum of cancer prevention and control: *http://cancercontrol.cancer.gov/od/index.html.* Entrants are required to address challenges faced by consumers, clinicians, or researchers such as behavior risk reduction for prevention/survivorship (*e.g.,* nutrition, physical activity, smoking cessation), early detection and screening, informed decision-making, and adherence to treatment regimens.

Eligibility Rules for Participating in the Competition

To be eligible to win a prize under this challenge, an individual or entity shall have complied with all the requirements under this section.

An individual or entity shall not be deemed ineligible because the individual or entity used Federal facilities or consulted with Federal employees during a competition if the facilities and employees are made available to all individuals and entities participating in the competition on an equitable basis.

This Challenge is open to any Contestant, defined as (1) an individual or team of U.S. citizens or permanent residents of the United States who are 13 years of age and over (with the permission of a parent/guardian if under 18 years of age), or (2) an entity

incorporated in and maintaining a primary place of business in the United States. Foreign citizens can participate as employees of an entity that is properly incorporated in the U.S. and maintains a primary place of business in the U.S. Contestants may submit more than one entry, *e.g.,* if they have developed more than one app. Eligibility for Phase II is conditional upon being selected as a Phase I finalist. Eligibility for a prize award is contingent upon fulfilling all requirements set forth herein. NCI will not select as a Finalist or Winner an individual or entity that is currently on the Excluded Parties List (*https://www.epls.gov/*).

A Federal entity or Federal employee acting within the scope of his or her employment is not eligible to participate. Federal employees seeking to participate in this contest outside the scope of their employment should consult their ethics official prior to developing their submission. Employees of the NCI and the judges or any other company or individual involved with the design, production, execution, or distribution of the Challenge and their immediate family (spouse, parents and step-parents, siblings and step-siblings, and children and step-children) and household members (people who share the same residence at least three (3) months out of the year) are not eligible to participate.

Regarding Liability and Indemnification, by participating in this competition, Contestants agree to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in this prize contest, whether the injury, death, damage, or loss arises through negligence or otherwise. By participating in this competition, Contestants agree to indemnify the Federal Government against third party claims for damages arising from or related to competition activities.

Regarding Insurance, based on the subject matter of the contest, the type of work that it will possibly require, as well as an analysis of the likelihood of any claims for death, bodily injury, or property damage, or loss potentially resulting from contest participation, Contestants are not required to obtain liability insurance or demonstrate financial responsibility in order to participate in this contest.

Regarding Copyright/Intellectual Property—Original Work: Upon submission, each Contestant warrants that he or she is the sole author and owner of the Submission, that the Submission is wholly original with the Contestant (or is an improved version of an existing app that the Contestant has sufficient rights to use—including the substantial improvement of existing open-source apps) and that it does not infringe any copyright or any other rights of any third party of which Contestant is aware. Each Contestant also warrants that the app is free of malware. In addition to complying with appropriate policies, procedures, and protections for data that ensures all privacy requirements, intellectual property considerations, and institutional/sponsor restrictions are met, use of publicly-available data obtained from NCI and other Federal partners should not allow the identification of an individual human subject from whom NCI and other Federal partners obtained such data.

Submission Rights: By participating in this contest, each Contestant grants to the NCI an irrevocable, paid-up, royalty-free nonexclusive worldwide license to post, link to, share, and display publicly the app on the Web, for the purpose of the Challenge, during the duration of the Challenge and for a period of one year following announcement of the winners. All Contestants will retain all other intellectual property rights in their Submissions.

Regarding Registration Process for Participants, interested persons should read the Official Rules (also posted on Challenge.gov) and register at the Health 2.0 Developer Challenge portal: *http://www.health2challenge.org/.* Registration is free and can be completed anytime during the Phase I App Submission Period, July 20 to August 26, 2011.

Amount of the Prize

At the culmination of Phase I, up to four NCI-selected finalists will each be awarded a $10,000 prize in conjunction with their participation in a special session at the Health 2.0 Fall Conference in San Francisco, California, in September 2011 to engage with leaders in government, venture capital, and technology for support in translating their innovations into commercially successful apps with potential public health impact. Phase I finalists will then receive additional time to upgrade and resubmit their apps for evaluation.

From the Slate of Phase I finalists, Phase II will lead to the selection of up to two winners who will each receive a $20,000 prize to present their apps in an award ceremony during a special symposium at the HICSS conference in Maui, Hawaii, on January 4, 2012. The HICSS symposium will focus on linking application developers with experts in the health science, commercial, and venture capital arenas for tailored advice on commercialization, integration with existing platforms, and public health impact. Travel expenses to San Francisco and Hawaii will not be separately reimbursed but are intended to be paid for from the Phase I and II awards, respectively.

NCI will also feature information about all finalist apps on an NCI Web site. This information will include a link to the award winning apps. All award recipients (in Phases I and II) will be required to make the app available on a publicly-accessible Web site until January 12, 2013.

Basis Upon Which Winner Will Be Selected

Phase I and Phase II entries will be judged by an expert panel composed of NCI program staff and external members of the health information technology community in compliance with the requirements of the America COMPETES Act. Judges may be named after commencement of the challenge. The judging panel will make selections based upon the following criteria:

1. *Use of cancer-related data:* Each entry must use at least one dataset or data service relevant to cancer prevention and control, as described in the section on judging criterion #2. When appropriate to the app, the use of additional datasets from other sources is also encouraged.

2. *Impact on the continuum of cancer prevention and control:* Each entry will be rated on the strength of its potential to help consumers, clinicians, and/or researchers address challenges related to the continuum of cancer prevention and control. Suggested targets comprise behavior risk reduction for prevention/survivorship (*e.g.,* nutrition, physical activity, smoking cessation), early detection and screening, informed decision-making, and adherence to treatment regimens. Examples include, but are not limited to, apps that provide new ways of visualizing and communicating complex health information for risk communication; consumer decision support incorporating multiple sources of data to reduce the burden of cancer and enhance outcomes following diagnosis and treatment; and decision aids for cancer screening (*e.g.,* prostate-specific antigen (PSA), breast, and cervical cancer screening tests). A detailed framework describing the continuum and related resources is available at the NCI DCCPS Web site: *http://*

cancercontrol.cancer.gov/od/continuum.html. Also see the following:

a. Zapka JG, Taplin SH, Solberg LI, Manos MM. A framework for improving the quality of cancer care: the case of breast and cervical cancer screening. *Cancer Epidemiol Biomarkers Prev.* 2003 Jan; 12(1):4–13).

b. Taplin SH, Clauser S, Rodgers AB, Breslau E, Rayson D. Interfaces across the cancer continuum offer opportunities to improve the process of care. *J Natl Cancer Inst Monogr 2010;*2010(40):104–10.

c. Hesse BW, Hanna C, Massett HA, Hesse NK. Outside the box: will information technology be a viable intervention to improve the quality of cancer care? *J Natl Cancer Inst Monogr 2010;*2010(40):81–9.

3. *Integration:* Each entry will be rated on its potential for, or actual integration with, existing electronic health record (EHR; recommended standards can be found at *http://healthit.hhs.gov/portal/server.pt/community/standards_and_certification/1153/home/15755*), personal health record (PHR), mobile, Web, and/or other emerging health information technology platforms.

4. *Innovation:* Each entry will be rated for the degree of new thinking it brings to applications targeting the continuum of cancer prevention and control, and the creativity shown in designing for impact.

5. *Usability:* Each entry will be rated on its user-friendliness and interactive capabilities. Preference will be given to applications that are easily accessible to a range of users, including those with disabilities.

Submissions should include a title, textual description of the submission, a link to the app, and a list of data sources and/or datasets used. Pictures and video are optional but helpful.

Additional Information: NCI, part of the National Institutes of Health (NIH), was established by Congress in 1937 and is the leading Federal agency and the world's largest organization solely dedicated to cancer-related research (including health communication and informatics), training, and dissemination of information. For more information, see *http://www.cancer.gov.*

Winners and finalists who meet the requisite qualifications, along with all interested and qualified parties, are also encouraged to apply for relevant funding opportunities to further develop and commercialize their innovative apps for cancer prevention and control, *e.g.,* in NCI's Small Business Innovation Research (SBIR) program: *http://sbir.cancer.gov/.*

In order for an entry to win this Challenge, it must meet the following requirements:

1. *General*—Contestants must provide continuous access to the app, a detailed description of the app, instructions on how to install and operate the app, and system requirements required to run the app (collectively, ''Submission'').

2. *Acceptable platforms*—The app must be designed for the Web, a personal computer, a mobile handheld device, console, or any platform broadly accessible on the open Internet.

3. *Data used*—The app must utilize cancer-related data (as described in the section on judging criterion #2) from publicly-available data sets, though they need not include all data fields available in a particular resource. Data from Federal sources may be used alone or in combination with other available data resources at the discretion of the entrant. Related data and resources can be found, for example, at the following: *http://healthdata.gov;* Health Indicators Warehouse *http://www.healthindicators.gov/;* American Time Use Survey *http://riskfactor.cancer.gov/studies/atus.html;* Behavioral Risk Factor Surveillance System (BRFSS) *http://www.cdc.gov/brfss/about.htm;* California Health Interview Survey (CHIS) public use data files *http://appliedresearch.cancer.gov/surveys/chis/module.html;* Classification of Laws Associated with School Students (C.L.A.S.S.) *http://class.cancer.gov/About.aspx;* Health Information National Trends Survey *http://hints.cancer.gov;* ImpactTeen Tobacco Database *http://www.impacteen.org/tobaccodata.htm;* National Health and Nutrition Examination Survey (NHANES) *http://riskfactor.cancer.gov/studies/nhanes/;* National Health Interview Survey (NHIS)—Cancer Control Topical Module *http://appliedresearch.cancer.gov/surveys/nhis/;* Surveillance, Epidemiology, and End Results (SEER) Program *http://seer.cancer.gov;* Tobacco Use Supplement to the Current Population Survey (TUS–CPS) *http://riskfactor.cancer.gov/studies/tus-cps/.*

4. *Accessibility*—The app must, to the extent practicable, be accessible to a wide range of users, including users with disabilities. Apps should also aim to meet objectives for Federal compliance guidelines for information technology as addressed by Section 508 of the Rehabilitation Act of 1973: *http://www.section508/gov.*

5. *Deadlines and Modifications*—The Phase I Submission must be available for evaluation and judging by 11:59 p.m., EDT, on August 26, 2011. The Phase II Submission must be available for evaluation and judging by 11:59 p.m., EST, November 18, 2011. These submissions must remain unchanged and unaltered for the Phase I and, when applicable, the Phase II judging periods.

6. *Intellectual Property*—The Submission must not infringe any copyright or any other rights of any third party.

7. *No NCI logo or endorsement*—The app must not use NCI's logo or official seal in the Submission and must not claim NCI endorsement. The award of a prize in this Challenge does not constitute an endorsement of a specific product by the NCI or the Federal Government.

8. *Functionality/Accuracy*—A Submission may be disqualified if the software application fails to function as expressed in the description provided by the user or if the software application provides inaccurate or incomplete information.

9. *Security*—Submissions must be free of malware. The Contestant agrees that NCI may conduct testing on the app to determine whether malware or other security threats may be present. NCI may disqualify the app if, in NCI's judgment, the app may damage the Government's or others' equipment or operating environment.

10. *Debarment and Suspension Screening.* By submitting an entry, Contestants consent to debarment and compliance screening.

Submissions satisfying these criteria will be posted on the Health 2.0 Developer Challenge portal (*http://www.health2challenge.org/*) on a rolling basis.

Compliance With Rules and Contacting Challenge Winners

Finalists and the Challenge Winners must comply with all terms and conditions of these Official Rules, and winning is contingent upon fulfilling all requirements contained herein. The Phase I finalists will be notified by e-mail, telephone, or mail after the date of the judging. Awards may be subject to Federal income taxes, and the Department of Health and Human Services will comply with the Internal Revenue Service withholding and reporting requirements, where applicable.

Privacy

If Contestants choose to provide the NCI with personal information by registering or filling out the submission form through the Challenge Web site (*http://www.health2challenge.org/*), that information is used to respond to Contestants in matters regarding their submission, announcements of entrants, finalists, and winners of the Challenge, related to promotion of the Challenge—unless Contestants choose to receive updates or notifications about other competitions from the NCI on an opt-in

basis. Information is not collected for commercial marketing. Winners are permitted to cite that they won this contest.

General Conditions

The NCI reserves the right to cancel, suspend, and/or modify the Competition, or any part of it, for any reason, at NCI's sole discretion.

Participation in this Challenge constitutes a contestant's full and unconditional agreement to abide by the Challenge's Official Rules found at *http://www.Challenge.gov* and *http://www.health2challenge.org/.*

Authority: 15 U.S.C. 3719.

Dated: July 18, 2011.

Francis S. Collins,

Director, National Institutes of Health.

[FR Doc. 2011–18559 Filed 7–21–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2011–0059]

Agency Information Collection Activities: Submission for Review; Information Collection Request for the Department of Homeland Security (DHS), Science and Technology, Biodefense Knowledge Center (BKC)

AGENCY: Science and Technology Directorate, DHS.

ACTION: 60-day Notice and request for comment.

SUMMARY: The Department of Homeland Security (DHS), Science & Technology (S&T) Directorate invites the general public to comment on data collection forms for the Biodefense Knowledge Center (BKC) program. BKC is responsible for coordinating the collection of Life Sciences Subject Matter Experts (SMEs) information with the Office of the Director of National Intelligence (ODNI), which operates under the authority of the National Security act of 1947, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004. These authorities charge the ODNI with responsibility to coordinate and rationalize the activities of the Intelligence Community components. The SME information is necessary to understand who can provide scientific expertise for peer review of life science programs. In addition, the directory makes it easier to identify scientific specialty areas for which there is a shortage of Subject Matter Experts (SMEs) with appropriate security clearances.

The DHS invites interested persons to comment on the following form and instructions (hereinafter ''Forms Package'') for the S&T BKC: (1) Subject Matter Expert Registration Form (DHS FORM 10043 (2/08)). Interested persons may receive a copy of the Forms Package by contacting the DHS S&T PRA Coordinator. This notice and request for comments is required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until September 20, 2011.

ADDRESSES: Interested persons are invited to submit comments, identified by docket number DHS–2011- 0059, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *E-mail: Daniel.Purcell@dhs.gov.* Please include docket number DHS–2011–0059 in the subject line of the message.
- *Fax:* (202) 254–6171. (Not a toll-free number).
- *Mail:* Science and Technology Directorate, ATTN: Chief Information Office—Daniel Purcell, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

FOR FURTHER INFORMATION CONTACT: DHS S&T PRA Coordinator Daniel Purcell (202) 254–5664 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The information will be collected via the DHS S&T BKC secure Web site at *https://bkms.llnl.gov/sme.* The BKC Web site will only employ secure Web-based technology (*i.e.,* electronic registration form) to collect information from users to both reduce the burden and increase the efficiency of this collection.

The Department is committed to improving its information collection and urges all interested parties to suggest how these materials can further reduce burden while seeking necessary information under the Act.

DHS is particularly interested in comments that:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Suggest ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Suggest ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Renewal of information collection.

(2) *Title of the Form/Collection:* Science and Technology, Biodefense Knowledge Center (BKC) program.

(3) *Agency Form Number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Department of Homeland Security, Science & Technology Directorate—(1) Subject Matter Expert Registration Form (DHS FORM 10043 (2/08)).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The Subject Matter Experts (SME) information is necessary to understand who can provide scientific expertise for peer review of life science programs. The directory makes it easier to identify scientific specialty areas for which there is a shortage of SMEs with appropriate security clearances. SME contact information, scientific expertise, and level of education is collected electronically through a Web portal developed by DHS S&T. The SME information is shared with U.S. Government program managers and other members of the biodefense community who have a legitimate need to identify life sciences SMEs. Cleared SMEs are necessary to accomplish scientific reviews and attend topical meetings.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

a. *Estimate of the total number of respondents:* 4,000.

b. *An estimate of the time for an average respondent to respond:* 0.25 burden hours.

c. *An estimate of the total public burden (in hours) associated with the collection:* 1,000 burden hours.

Dated: July 13, 2011.

Tara O'Toole,

Under Secretary for Science and Technology.

[FR Doc. 2011–18621 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3323–EM; Docket ID FEMA–2011–0001]

Nebraska; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Nebraska (FEMA–3323–EM), dated June 18, 2011, and related determinations.

DATES: *Effective Date:* June 18, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 18, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Nebraska resulting from flooding beginning on June 17, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Nebraska.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Nebraska have been designated as adversely affected by this declared emergency:

Boyd, Burt, Cass, Cedar, Dakota, Dixon, Douglas, Garden, Knox, Lincoln, Morrill, Nemaha, Otoe, Richardson, Sarpy, Scotts Bluff, Thurston, and Washington Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18466 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3325–EM; Docket ID FEMA–2011–0001]

Missouri; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Missouri (FEMA–3325–EM), dated June 30, 2011, and related determinations.

DATES: *Effective Date:* June 30, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 30, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Missouri resulting from flooding beginning on June 1, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Missouri.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Elizabeth Turner, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Missouri have been designated as adversely affected by this declared emergency:

Andrew, Atchison, Boone, Buchanan, Callaway, Carroll, Chariton, Clark, Clay, Cole, Cooper, Franklin, Gasconade, Holt, Howard, Jackson, Lafayette, Lewis, Moniteau, Montgomery, Osage, Platte, Ray, Saline, St. Charles, St. Louis, and Warren Counties, and the Independent City of St. Louis for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18613 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3324–EM; Docket ID FEMA–2011–0001]

Kansas; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Kansas (FEMA–3324–EM), dated June 25, 2011, and related determinations.

DATES: *Effective Date:* June 25, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 25, 2011, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5208 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Kansas resulting from flooding beginning on June 1, 2011, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of Kansas.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Bradley Harris, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of Kansas have been designated as adversely affected by this declared emergency:

Atchison, Doniphan, Leavenworth, and Wyandotte Counties for emergency protective measures (Category B), limited to direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18612 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1997–DR; Docket ID FEMA–2011–0001]

Indiana; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1997–DR), dated June 23, 2011, and related determinations.

DATES: *Effective Date:* June 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective June 6, 2011.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18461 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1972–DR; Docket ID FEMA–2011–0001]

Mississippi; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Mississippi (FEMA–1972–DR), dated April 29, 2011, and related determinations.

DATES: *Effective Date:* July 6, 2011.

FOR FURTHER INFORMATION CONTACT: Tod Wells, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3834.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, on July 6, 2011, FEMA extended the cost-sharing arrangements previously set forth on May 5, 2011 regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I hereby authorize as a pilot project a 90 percent Federal cost share through July 13, 2011 (75 days from the date of declaration) for direct Federal assistance for debris removal for those areas within counties designated for Public Assistance that are within, or immediately adjacent to, areas of ''extensive'' or ''catastrophic'' damage as determined and depicted by the National Geospatial Intelligence Agency. Further, under this pilot program, FEMA shall obtain any applicable private insurance payments for debris removal to reimburse Federal costs to the fullest extent of the law. This authorization previously extended 45 days, until June 12, 2011.

This adjustment to State and local cost sharing applies only to Public Assistance costs, limited to direct Federal assistance, for eligible debris removal under the pilot project. All other Public Assistance costs will continue to be reimbursed at 75 percent of total eligible costs. The law specifically prohibits a similar adjustment for funds provided to States for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18460 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1981–DR; Docket ID FEMA–2011–0001]

North Dakota; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of North Dakota (FEMA–1981–DR), dated May 10, 2011, and related determinations.

DATES: *Effective Date:* July 13, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of North Dakota is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of May 10, 2011.

Barnes, Ramsey, and Richland Counties, and the Spirit Lake Nation for Individual Assistance (already designated for Public Assistance).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18459 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1989–DR; Docket ID FEMA–2011–0001]

Oklahoma; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1989–DR), dated June 6, 2011, and related determinations.

DATES: *Effective Date:* July 6, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following area among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of June 6, 2011.

Ottawa County for Individual Assistance

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18610 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1997–DR; Docket ID FEMA–2011–0001]

Indiana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Indiana (FEMA–1997–DR), dated June 23, 2011, and related determinations.

DATES: *Effective Date:* June 23, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 23, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Indiana resulting from severe storms, tornadoes, and straight line winds occurring on April 19, 2011, and April 22 to May 2, 2011, and flooding resulting from those storms beginning on April 19, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Indiana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Donald L. Keldson, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Indiana have been designated as adversely affected by this major disaster:

Benton, Clark, Crawford, Daviess, Dearborn, Dubois, Floyd, Franklin, Gibson, Harrison, Jackson, Jefferson, Jennings, Knox, Martin, Monroe, Ohio, Orange, Parke, Perry, Pike, Posey, Putnam, Ripley, Scott, Spencer, Starke, Sullivan, Switzerland, Vanderburgh, Warrick, and Washington Counties for Public Assistance.

All counties within the State of Indiana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18616 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1999–DR; Docket ID FEMA–2011–0001]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1999–DR), dated July 1, 2011, and related determinations.

DATES: *Effective Date:* July 1, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 1, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Texas resulting from wildfires during the period of April 6 to May 3, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Kevin L. Hannes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Texas have been designated as adversely affected by this major disaster:

Andrews, Archer, Armstrong, Bailey, Baylor, Brewster, Callahan, Carson, Castro, Clay, Coleman, Concho, Cottle, Crockett, Dawson, Duval, Eastland, Garza, Glasscock, Hall, Hemphill, Hockley, Irion, Kent, King, Lynn, Martin, Mason, Mitchell, Moore, Motley, Pecos, Presidio, Scurry, Stephens, Sterling, Sutton, Terrell, Terry, Throckmorton, Tom Green, Trinity, Tyler, Val Verde, and Young Counties for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals

and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18620 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1998–DR; Docket ID FEMA–2011–0001]

Iowa; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Iowa (FEMA–1998–DR), dated June 27, 2011, and related determinations.

DATES: *Effective Date:* June 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 27, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Iowa resulting from flooding beginning on May 25, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Iowa.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide assistance for debris removal and emergency protective measures (Categories A and B), under the Public Assistance program and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Iowa have been designated as adversely affected by this major disaster:

Fremont, Harrison, Mills, Monona, Pottawattamie, and Woodbury Counties for debris removal and emergency protective measures (Categories A and B), including direct Federal assistance, under the Public Assistance program.

All counties within the State of Iowa are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18625 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1986–DR; Docket ID FEMA–2011–0001]

North Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1986–DR), dated May 20, 2011, and related determinations.

DATES: *Effective Date:* May 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 20, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from a severe winter storm during the period of April 29 to May 1, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of North Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Willie G. Nunn, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of North Dakota have been designated as adversely affected by this major disaster:

Bottineau, Burke, Divide, Dunn, McKenzie, Mountrail, Renville, Ward, and Williams Counties for Public Assistance.

All counties within the State of North Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to

Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18465 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1987–DR; Docket ID FEMA–2011–0001]

Idaho; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Idaho (FEMA–1987–DR), dated May 20, 2011, and related determinations.

DATES: *Effective Date:* May 20, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 20, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Idaho resulting from flooding, landslides, and mudslides during the period of March 31 to April 11, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Idaho.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Dolph A. Diemont, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Idaho have been designated as adversely affected by this major disaster:

Bonner, Clearwater, Idaho, Nez Perce, and Shoshone Counties and the Nez Perce Tribe for Public Assistance.

All counties and Indian Tribes within the State of Idaho are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18463 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1988–DR; Docket ID FEMA–2011–0001]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1988–DR), dated May 27, 2011, and related determinations.

DATES: *Effective Date:* May 27, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 27, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from severe storms and flooding during the period of April 21–28, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, William J. Doran III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Adair, Cherokee, Delaware, Haskell, Le Flore, McIntosh, Muskogee, Okmulgee, Pittsburg, and Sequoyah Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA);

97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18462 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4001–DR; Docket ID FEMA–2011–0001]

Vermont; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Vermont (FEMA–4001–DR), dated July 8, 2011, and related determinations.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 8, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Vermont resulting from severe storms and flooding during the period of May 26–27, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Vermont.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Craig A. Gilbert, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Vermont have been designated as adversely affected by this major disaster:

Caledonia and Washington Counties for Individual Assistance.

Caledonia County for Public Assistance.

All counties within the State of Vermont are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18615 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4000–DR; Docket ID FEMA–2011–0001]

Arkansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arkansas (FEMA–4000–DR), dated July 8, 2011, and related determinations.

DATES: *Effective Date:* July 8, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 8, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Arkansas resulting from severe storms, tornadoes, and flooding during the period of May 24–26, 2011, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Arkansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas, and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arkansas have been designated as adversely affected by this major disaster:

Franklin and Johnson Counties for Individual Assistance.

Crawford, Franklin, and Johnson Counties for Public Assistance.

All counties within the State of Arkansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18622 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1996–DR; Docket ID FEMA–2011–0001]

Montana; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Montana (FEMA–1996–DR), dated June 17, 2011, and related determinations.

DATES: *Effective Date:* June 17, 2011.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated June 17, 2011, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Montana resulting from occurring on April 3, 8, 22, 26, and 30, 2011, and on May 9–10, 18–21, and 30, 2011, and flooding resulting from those storms beginning on April 4, 2011, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Montana.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Douglas G. Mayne, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Montana have been designated as adversely affected by this major disaster:

Big Horn, Blaine, Broadwater, Carbon, Carter, Cascade, Chouteau, Custer, Dawson, Fallon, Fergus, Garfield, Golden Valley, Hill, Judith Basin, McCone, Meagher, Musselshell, Petroleum, Phillips, Powder River, Prairie, Roosevelt, Rosebud, Stillwater, Sweet Grass, Treasure, Valley, Wheatland, Wibaux, and Yellowstone Counties, and the Crow, Fort Belknap, Northern Cheyenne, and Rocky Boy's Reservations for Public Assistance.

All counties and Indian Tribes within the State of Montana are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Dated: July 18, 2011.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2011–18618 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the U.S. Customs and Border Protection regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

Name	License #	Issuing port
Dollar Customs House Brokerage, LLC	28045	Los Angeles.
Wendy Searles	22808	Dallas.
David W. Price	11001	San Francisco.
Bayer Corporate and Business Services, LLC	23510	Philadelphia.
A.H. Carter & Associates, Inc	12109	Seattle.
Coronet of California, Inc	04400	Los Angeles.

Dated: June 30, 2011.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–18527 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Cancellation of Customs Broker Licenses Due to Death of the License Holder

AGENCY: U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General Notice.

SUMMARY: Notice is hereby given that, pursuant to Title 19 of the Code of Federal Regulations at section 111.51(a), the following individual Customs broker licenses and any and all permits have been cancelled due to the death of the broker:

Name	License #	Port name
Ofelia M. Pazos	20178	Miami
Kurt Konodi-Floch ...	03323	Chicago
Deborah Butler	10964	Houston
Ronald R. Hodge	07499	St. Louis

Dated: June 30, 2011.

Allen Gina,

Assistant Commissioner, Office of International Trade.

[FR Doc. 2011–18526 Filed 7–21–11; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5477–N–29]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 14, 2011.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 2011–18230 Filed 7–21–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Notice of a New System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of creation of a new system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended, the Department of the Interior is issuing a public notice of its intent to create the Department of the Interior system of records titled, Department of the Interior Social Networks. The system will assist the Department of the Interior by providing new ways to connect and share information, and solicit and receive feedback freely with the public. This newly established system will be included in the Department of the Interior's inventory of record systems.

DATES: Comments must be received by August 31, 2011. This new system will be effective August 31, 2011.

ADDRESSES: Any person interested in commenting on this new system of records may do so by: submitting comments in writing to the OS/NBC Privacy Act Officer, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240; hand-delivering comments to the OS/NBC Privacy Act Officer, 1951 Constitution Avenue, NW., Mail Stop 116 SIB, Washington, DC 20240; or e-mailing comments to *privacy@nbc.gov.*

FOR FURTHER INFORMATION CONTACT: System Manager, Director of New Media, 1849 C Street NW., Mail Stop 6320 MIB, Washington, DC 20240, 202–208–7975.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of the Interior is creating the DOI Social Networks system of records. The purpose of this system is to allow the Department of the Interior to interact with the public using third party or commercial social media applications. These applications facilitate the sharing of information and ideas between the Department of the Interior and the public. Many social media applications require users to register or provide information to utilize their services. While the Department of the Interior may use social media applications to connect with the public in an official capacity, information provided by an individual to register with the third party site is rarely shared with the Department. Information collected and stored by the social media applications is subject to the third party privacy policies posted on their Web sites. The Department of the Interior may receive contact information from the third party site for individuals who wish to have further contact with the Department for additional communications such as dissemination of information for an upcoming event, notification of an emergency or breaking news, or solicitation of feedback about a program. The Department may also receive user names or e-mails for individuals who have commented or submitted information on a Department of the Interior section on a social media Web site. The Department may also receive information indirectly from social media sites as part of specific programs or initiatives.

The Department may use social media applications to share information with the public, to collect ideas and comments submitted by the public, and to promote participation and collaboration with the public. A list of the Department of the Interior's Social Media presence can be found at: *http://www.doi.gov/news/Social-Media.cfm.* The information provided by the Department on these social media sites is also available on Department of the Interior public Web sites. If the Department is requesting feedback from the public through the use of a social media site, an alternative DOI e-mail address will also be provided so that the public may interact with the Department without having to use the social media site. When an individual submits an e-mail directly to the Department, the Department will maintain the individual's e-mail, and

any other personal information provided in their e-mail, in accordance with applicable records retention policy. All interactions by the public are voluntary. The Department of the Interior's Social Media Policy can be found at: *http://www.doi.gov/notices/Social-Media-Policy.cfm.*

The system will be effective as proposed at the end of the comment period (the comment period will end 40 days after the publication of this notice in the **Federal Register**), unless comments are received that would require a contrary determination. DOI will publish a revised notice if changes are made based upon a review of the comments received.

II. Privacy Act

The Privacy Act of 1974, as amended, embodies fair information principles in a statutory framework governing the means by which Federal agencies collect, maintain, use, and disseminate individuals' personal 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 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. The Privacy Act defines an individual as a United States citizen or lawful permanent resident. As a matter of policy, DOI extends administrative Privacy Act protections to all individuals. Individuals may request access to their own records that are maintained in a system of records in the possession or under the control of DOI by complying with DOI Privacy Act Regulations, 43 CFR part 2.

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, the routine uses that are contained in each system in order to make agency record keeping practices transparent, to notify individuals regarding the uses of their records, and to assist individuals to more easily find such records within the agency. Below is the description of the Department of the Interior Social Networks system of records.

In accordance with 5 U.S.C. 552a(r), DOI has provided a report of this system of records to the Office of Management and Budget and to Congress.

III. Public Disclosure

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: July 5, 2011.

Karen Burke,

OS/NBC Privacy Act Officer.

SYSTEM OF RECORDS:

DOI–08

SYSTEM NAME:

DOI Social Networks.

SYSTEM CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records contained in these systems of records are maintained by the Bureau or Office conducting the social media outreach.

(1) Office of the Secretary, 1849 C Street, NW., Washington, DC 20240.

(2) Bureau of Land Management, 1120 20th Street, NW., Washington, DC 20036.

(3) U.S. Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225–0007.

(4) U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

(5) National Park Service, 1201 I Street, NW., Org Code 2652, Washington, DC 20005.

(6) U.S. Fish and Wildlife Service, 4501 N. Fairfax Drive, Arlington, Virginia 22203.

(7) Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Herndon, Virginia 20170.

(8) Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue, NW., Washington, DC 20240.

(9) Bureau of Indian Affairs, 625 Herndon Parkway, Herndon, VA 20170.

Social media sites may retain separate records from the Department. Please see the Department of the Interior Privacy Policy for more information. *http://www.doi.gov/privacy.cfm.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who contact the Department of the Interior through a social media outlet or other electronic means, including submitting feedback to the Department of the Interior, corresponding with the Department as a result of the Department's outreach using social networks, or requesting to be contacted by the Department.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system may contain information passed through a social media site to facilitate interaction with the Department such as, but not limited to: first name, last name, username, e-mail address, home or work address, contact information, and phone numbers. It may also include input and feedback from the public, such as comments, e-mails, videos, and images, which may include tags, geotags or geographical metadata. Depending on the circumstances of the individual's interaction and the social media site being used, it may include data provided to the Department such as date of birth, age, security questions, IP addresses, passwords, financial data, educational, business, or volunteer affiliation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Presidential Memorandum to the Heads of Executive Departments and Agencies on Transparency and Open Government, January 21, 2009. OMB M–10–06, Open Government Directive, Dec. 8, 2009. OMB M–10–22, Guidance for Online Use of Web Measurement and Customization Technologies, June 25, 2010. OMB M–10–23, Guidance for Agency Use of Third-Party Web sites and Applications, June 25, 2010. The Department of the Interior, Establishment, 43 U.S.C. 1451.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this system is to allow the Department of the Interior to interact with the public and provide additional transparency to the public through the use of social media. Registration information, username, comments, and suggestions made by the public on third party social networks where the Department has an official presence may be collected by third party social networks for registration or use of social media sites. Information and comments provided may be utilized by the Department of the Interior to facilitate interaction with the public, to disseminate information regarding an upcoming event, to notify the public of an emergency or breaking news, or solicit feedback about Departmental programs. The Department of the Interior may also respond to information received directly from individuals who provide feedback from social media outreach using alternate methods, such

as an e-mail directly to the Department, a form on a DOI Web page, or comments on a DOI blog.

A list of the Department of the Interior's Social Media presence can be found at: *http://www.doi.gov/news/Social-Media.cfm.*

DISCLOSURES OUTSIDE DOI MAY BE MADE WITHOUT THE CONSENT OF THE INDIVIDUAL TO WHOM THE RECORD PERTAINS UNDER THE ROUTINE USES LISTED BELOW:

(1) (a) To any of the following entities or individuals, when the circumstances set forth in paragraph (b) are met:

(i) The U.S. Department of Justice (DOJ);

(ii) A court or an adjudicative or other administrative body;

(iii) A party in litigation before a court or an adjudicative or other administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When:

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any other Federal agency appearing before the Office of Hearings and Appeals;

(C) Any DOI employee acting in his or her official capacity;

(D) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(E) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purpose for which the records were compiled.

(2) To a congressional office in response to a written inquiry that an individual covered by the system, or the heir of such individual if the covered individual is deceased, has made to the office.

(3) To the Executive Office of the President in response to an inquiry from that office made at the request of the subject of a record or a third party on that person's behalf, or for a purpose compatible for which the records are collected or maintained.

(4) To any criminal, civil, or regulatory law enforcement authority (whether Federal, state, territorial, local, Tribal or foreign) when a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature, and the disclosure is compatible with the purpose for which the records were compiled.

(5) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files or to enable that agency to respond to an inquiry by the individual to whom the record pertains.

(6) To Federal, state, territorial, local, Tribal, or foreign agencies that have requested information relevant or necessary to the hiring, firing or retention of an employee or contractor, or the issuance of a security clearance, license, contract, grant or other benefit, when the disclosure is compatible with the purpose for which the records were compiled.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2904 and 2906.

(8) To state and local governments and Tribal organizations to provide information needed in response to court order and/or discovery purposes related to litigation, when the disclosure is compatible with the purpose for which the records were compiled.

(9) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs services requiring access to these records on DOI's behalf to carry out the purposes of the system.

(10) To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are 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.

(11) To the Office of Management and Budget during the coordination and clearance process in connection with legislative affairs as mandated by OMB Circular A–19.

(12) To the Department of the Treasury to recover debts owed to the United States.

(13) To a consumer reporting agency if the disclosure requirements of the Debt Collection Act, as outlined at 31 U.S.C. 3711(e)(1), have been met.

(14) To the news media and the public, with the approval of the Public Affairs Officer in consultation with Counsel and the Senior Agency Official for Privacy, where there exists a legitimate public interest in the disclosure of the information, except to the extent it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records are contained in file folders stored in file cabinets; electronic records are contained in removable drives, computers, e-mail and electronic databases.

RETRIEVABILITY:

Information may be retrieved by full-text search, name, image, video, e-mail address, user name, or date received.

SAFEGUARDS:

The records contained in this system are safeguarded in accordance with applicable security rules and policies. Access to the servers containing the records in this system is limited to DOI personnel who have a need to know the information for the performance of their official duties. The DOI servers storing this information are located in secured DOI facilities with access codes, security codes, and security guards. Personnel authorized to access systems must complete all Security, Privacy, and Records training and sign the DOI rules of behavior. Access to DOI networks and data requires a valid username and password. Manual records are maintained in file cabinets located in secure DOI facilities under the control of authorized personnel.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with DOI social media records schedule. The disposition is temporary, and records will be destroyed when no longer needed for agency business.

SYSTEM MANAGER AND ADDRESS:

Policy official is the Director of New Media, 1849 C Street, NW., Washington,

DC 20240. Records holders are organizational elements of the Department of the Interior Bureaus and Offices who utilize social networks:

(1) Director of New Media, 1849 C Street, NW., Washington, DC 20240.

(2) Office of the Secretary, 1849 C Street, NW., Washington, DC 20240.

(3) Bureau of Land Management, 1120 20th Street, NW., Washington, DC 20036.

(4) U.S. Bureau of Reclamation, Denver Federal Center, P.O. Box 25007, Denver, Colorado 80225–0007.

(5) U.S. Geological Survey, 12201 Sunrise Valley Drive, Reston, Virginia 20192.

(6) National Park Service, 1201 I Street, NW., Org Code 2652, Washington, DC 20005.

(7) U.S. Fish and Wildlife Service, 4501 N. Fairfax Drive, Arlington, Virginia 22203.

(8) Bureau of Ocean Energy Management, Regulation and Enforcement, 381 Elden Street, Herndon, Virginia 20170.

(9) Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240.

(10) Bureau of Indian Affairs, 625 Herndon Parkway, Herndon, VA 20170.

A list of the Department of the Interior's Social Media presence can be found at: *http://www.doi.gov/news/Social-Media.cfm.*

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should send a signed, written inquiry to the Bureau FOIA Officer. A list of the FOIA Officers and their contact information can be found at *http://www.doi.gov/foia/contacts.html.* The request letter should be clearly marked ''PRIVACY ACT INQUIRY''. The written inquiry should be signed and include as much of the following information as possible: Name, address, the social media site used, identifier used (username, e-mail address, pseudonym), and date range if known. A request for notification must meet the requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

An individual requesting access to records on himself or herself should send a signed, written inquiry to the Bureau FOIA Officer. A list of the FOIA Officers and their contact information can be found at *http://www.doi.gov/foia/contacts.html.* The request letter should be clearly marked ''PRIVACY ACT REQUEST FOR ACCESS''. The written inquiry should be signed and include as much of the following information as possible: Name, address, the social media site used, identifier used (username, e-mail address, pseudonym), and date range if known. A request for notification must meet the requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

An individual requesting corrections or contesting information contained in his or her records must send a signed, written request to the Bureau Privacy Act Officer. A list of the Privacy Act Officers and their contact information can be found at: *http://www.doi.gov/ocio/privacy/doi_privacy_act_officers.htm.* A request for corrections or removal must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals who interact with the Department of the Interior through social media networks or who communicate electronically with the Department in response to public outreach.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–18508 Filed 7–21–11; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2011–N143; 1112–0000–81420–F2]

Proposed Low-Effect Habitat Conservation Plan for the California Tiger Salamander, AT&T Portable Generator Storage Facility, Yolo County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comment.

SUMMARY: We, the U. S. Fish and Wildlife Service, have received an application from the AT&T Services, Inc. (applicant) for a 10-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of one Federally listed animal, the California tiger salamander. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in applicant's low-effect habitat conservation plan (Plan). We request comments on the applicant's application and plan, and the preliminary determination that the plan qualifies as a ''low-effect'' habitat conservation plan, eligible for a Categorical Exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

DATES: We must receive written comments on or before August 22, 2011.

ADDRESSES: Please address written comments to Jason Hanni, Fish and Wildlife Biologist, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

FOR FURTHER INFORMATION CONTACT: Mike Thomas, Chief, Conservation Planning Division, or Eric Tattersall, Deputy Assistant Field Supervisor/Division Chief, Conservation Planning and Recovery, at the address shown above or at (916) 414–6600 (telephone).

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the permit application, plan, and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**. Copies of these documents are available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Background Information

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and its implementing Federal regulations prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. ''Take'' is defined under the Act to include the following activities: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or to attempt to engage in such conduct. However, under section 10(a)(1)(B) of the Act, we may issue permits to authorize incidental take of listed species. ''Incidental take'' is defined by the Act as take that is incidental to, and not the purpose of, carrying out an otherwise

lawful activity. Regulations governing incidental take permits for endangered and threatened species, respectively, are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 50 CFR 17.32. All species included in the incidental take permit would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

The applicant seeks an incident take permit for indirect effects within 1.57 acres (1.24 acres permanent, plus 0.33 acres temporary) of grasslands associated with the construction of a portable generator storage facility located at 26120 County Road 6, Dunnigan, CA 95937, in Yolo County, California. AT&T would permanently convert 1.24 acres of upland grassland habitat for the California tiger salamander into a new storage facility for portable generators within the undeveloped portion of a 45-acre parcel. The Applicant currently owns and manages the 45-acre parcel, including an existing cellular communications facility. The applicant is requesting a permit for take of one animal species Federally listed as threatened: The Central Distinct Population Segment (DPS) of the California tiger salamander (*Ambystoma californiense*) (salamander, or ''Covered Species'').

The following action is proposed as the ''Covered Activities'' under the plan: Construction of the portable generator storage facility in order to store portable generators. The storage facility consists of a metal building, with approximate dimensions of 100 feet 6 inches by 251 feet, immediately north and adjacent to the existing paved surface, to allow on-site storage of 50 portable 40-kw diesel generators and 175 portable 5-kw diesel generators. These 225 generators would be stored on trailers, but would not be connected to a power source. The building, which would have an east-west orientation, would include vertical support columns spaced 25 feet apart on center along the 251-foot dimension and at each corner, to support the roof. There would be open sidewalls to allow trailers to be easily moved in and out by forklifts or similar equipment. A 45-foot-wide asphalt driveway would surround the building on all four sides to provide access to the building by forklifts. The storage facility would be located within a 45-acre parcel along side an existing telecommunications facility. The existing telecommunications facility occupies approximately 9 acres and includes several concrete buildings surrounded by a paved asphalt parking lot, storm water detention ponds, and an existing telecommunications array. The undeveloped portion of the 45-acre parcel (approximately 36 acres) consists mainly of disturbed annual grassland that is currently used for grazing. Three adult salamanders were observed on the developed portion of the AT&T facility on October 25 and 29, 2010. In addition, several salamander larvae were observed in the seasonal wetland, west of the developed portion of the project site, on April 15 and 30, 2011.

The applicant proposes to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities by fully implementing the Plan. The following mitigation measures will be implemented:

- Purchase of 3.72 upland salamander credits at a Service-approved conservation bank;
- Installation of exclusion fencing during the winter of 2011 with regular monitoring;
- Relocation of any salamanders trapped within the work zone to a safe area outside the development area;
- Mowing of all grassland vegetation within the project footprint prior to any grading, in order to uncover potential burrows that may be in use by salamanders;
- Survey of all potential burrows and crevices within the construction footprint, and hand excavation of any salamanders observed within these burrows;
- Environmental awareness training to all workers;
- Prohibition of night construction activities;
- Restricted speed limits on the main access road to less than 15 miles per hour during the salamander migration season;
- Implementation of standard erosion-control measures around seasonal wetlands down slope of the construction site; and
- Presence of an available qualified individual on site during the initial stages of construction and earthmoving activities to handle and relocate salamanders if any are found.

Alternatives

Our proposed action is approving the applicant's plan and issuing an incidental take permit for the applicant's Covered Activities. As required by the Act, the applicant's plan considers alternatives to the take under the proposed action. The plan considers the environmental consequences of three alternatives to the proposed action: A No Action alternative, an Alternative Configuration Alternative, and an Off-Site Alternative.

Under the No Action Alternative, we would not issue a permit, and the emergency generator storage facility would not be constructed. The proposed building site would remain undeveloped, although it lies immediately adjacent to the developed portion of the existing facility. AT&T would not be able to store all needed portable generators at this facility, which would result in delays in restoring telecommunications systems following a disaster. For these reasons, the No-Action Alternative has been rejected.

The Alternative Configuration Alternative would have involved approximately 600 cubic yards (cy) of cut and 6,200 cy of fill, requiring the import of 5,600 cy of soil. This alternative would have resulted in greater impacts to the salamander over the Proposed Action, and was therefore rejected.

Under the Off-Site Alternative, AT&T considered construction of the storage facility at three other sites in northern California. These include sites in Rocklin, Manteca, and Richmond, California. Both the Rocklin and Manteca sites were rejected due to the presence of other Federally listed species, including vernal pool fairy shrimp (*Branchinecta lynchi*) and California red legged frog (*Rana draytonii*), which have more restricted ranges than the salamander. AT&T had previously proposed plans for a fleet yard on the Richmond property; however, these were denied by local agencies due to noise and traffic concerns, making it likely that the Proposed Action would also be rejected. In addition, the Richmond site is not as centrally located as the Dunnigan property. For these reasons the Off-Site Alternative was rejected.

Under the proposed action alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above and in more detail in the Plan. The proposed project is expected to result in the permanent loss of 1.24 acres of upland grassland habitat and temporary loss of 0.33 acres of grassland habitat for the California tiger salamander. To mitigate these effects, the applicant proposes to purchase 3.72 upland salamander credits at a Service-approved conservation bank.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed plan and issuance of the permit would qualify as a categorical exclusion under NEPA (42

U.S.C. 4321 *et seq.*), as provided by Federal regulations (40 CFR Part 1500, 5(k), 1507.3(b)(2), 1508.4) and the Department of the Interior Manual (516 DM 2 and 516 DM 8). Our EAS found that the proposed plan qualifies as a ''low-effect'' habitat conservation plan, as defined by our Habitat Conservation Planning Handbook (November 1996). Determination of low-effect habitat conservation plans is based on the following three criteria: (1) Implementation of the proposed plan would result in minor or negligible effects on Federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the plan, considered together with the impacts of other past, present, and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Public Review

We provide this notice pursuant to section 10(c) of the Act and the NEPA public-involvement regulations (40 CFR 1500.1(b), 1500.2(d), and 1506.6). We will evaluate the permit application, including the plan and comments we receive, to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the Central Distinct Population Segment (DPS) of the California tiger salamander from the implementation of the Covered Activities described in the Low-effect Habitat Conservation Plan, for the California tiger salamander, for the AT&T Portable Generator Storage Facility, Yolo County, California. We will make the final permit decision no sooner than 30 days after the date of this notice.

Dated: July 15, 2011.

Susan K. Moore,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2011–18509 Filed 7–21–11; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[[LLWO320000 L13300000.PO0000]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day Notice and Request for Comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) for a 3-year renewal of OMB Control Number 1004–0103 under the Paperwork Reduction Act. This control number covers paperwork requirements pertaining to the purchase of mineral materials from public lands.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. Therefore, written comments should be received on or before August 22, 2011.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0103), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_docket@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street, NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: Jean Sonneman at fax number 202–912–7181.

Electronic mail: jean_sonneman@blm.gov.

FOR FURTHER INFORMATION CONTACT: George Brown, Division of Solid Minerals, at 202–912–7118. Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, to leave a message for Mr. Brown. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. 44 U.S.C. 3506 and 3507. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)). For this control number, the BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please submit comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–0103 in your correspondence. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Sale of Mineral Materials (43 CFR Part 3600).

Form: Form 3600–9, Contract for the Sale of Mineral Materials.

OMB Control Number: 1004–0103.

Abstract: The Mineral Materials Act, 30 U.S.C. 601 and 602, authorizes disposals of mineral materials (such as sand, gravel, and petrified wood) from public lands. This information collection request pertains to mineral sales contracts in accordance with regulations at 43 CFR part 3600. Form 3600–9 (Contract for the Sale of Mineral Materials) is the only form currently approved by OMB under control number 1004–0103, and the only form for which the BLM has requested approval in this information collection request. In the 60-day notice for this information collection request, the BLM proposed to change the title of Form 3600–9, but the BLM has decided that the title should remain ''Contract for the Sale of Mineral Materials.''

Frequency of Collection: The BLM collects the information on occasion. Responses are required in order to obtain or retain a benefit.

Estimated Number and Description of Respondents: Each year, an estimated 440 businesses submit applications to purchase or use mineral materials from public lands.

Estimated Reporting and Recordkeeping "Hour" Burden: 2,540 responses and 11,635 hours annually. The following table details the individual components and respective hour burdens of this information collection request:

A. Type of response	B. Number of responses	C. Time per response	D. Total hours (B × C)
Pre-Application Sampling and Testing, 43 CFR 3601.30	30	30 minutes	15
Request for Sale Not Within a Community Pit or Common Use Area, 43 CFR 3602.11	94	30 minutes	47
Request for Sale Within a Community Pit or Common Use Area, 43 CFR 3602.11	346	30 minutes	173
Mining and Reclamation Plans (Simple), 43 CFR 3601.40	200	2 hours	400
Mining and Reclamation Plans (Complex), 43 CFR 3601.40	110	24 hours	2,640
Contract for the Sale of Mineral Materials, 43 CFR subpart 3602, Form 3600–9	440	30 minutes	220
Performance Bond, 43 CFR 3602.14	440	30 minutes	220
Payments, 43 CFR 3602.21 and 3602.29	440	12 hours	5,280
Records Maintenance, 43 CFR 3602.28	440	6 hours	2,640
Totals	2,540		11,635

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: $104,340.

60-Day Notice: As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on March 28, 2011 (76 FR 17149), soliciting comments from the public and other interested parties. The comment period closed on May 27, 2011. The BLM received one comment. The comment was a general invective about the Federal government, the Department of the Interior, and the BLM. It did not address, and was not germane to, this information collection. Therefore, the BLM has not changed the information collection in response to the comment.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2011–18514 Filed 7–21–11; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWYL03000 L51010000.FX0000 LVRWK09K1030; WYW–167155]

Notice of Availability of the Draft Resource Management Plan Amendment, Draft Environmental Impact Statement, and Segregation of Public Lands for the Proposed Chokecherry and Sierra Madre Wind Farm Project; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment/Draft Environmental Impact Statement (EIS) for the Proposed Chokecherry and Sierra Madre (CCSM) Wind Farm Project and by this notice is (1) Opening the comment period; and (2) Segregating 107,175 acres of public lands located within the CCMS Right-of-Way (ROW) application area from appropriation under the public land laws including the 1872 Mining Law, but not the Mineral Leasing or Mineral Material Acts, for a period of 2 years from the date of publication of this notice.

DATES: To ensure that comments will be considered, the BLM must receive written comments on the Draft RMP Amendment/Draft EIS within 90 days following the date the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through public notices, media releases, and/or mailings.

ADDRESSES: You may submit comments related to the Chokecherry and Sierra Madre Wind Farm Project by any of the following methods:

- *E-mail: WYMail_PCW_Windfarm@blm.gov;*
- *Fax:* 307–328–4224; or
- *Mail/Hand Delivery:* Bureau of Land Management, Chokecherry and Sierra Madre Wind Farm Project, *Attention:* Pamela Murdock, Project Manager, P.O. Box 2407, 1300 N. Third Street, Rawlins, Wyoming 82301.

Copies of the Draft RMP Amendment/Draft EIS are available for review in the BLM Rawlins Field Office at the above address or at the following Web site: *http://www.blm.gov/pgdata/content/wy/en/info/NEPA/documents/rfo/Chokecherry.html.*

The Draft RMP Amendment/Draft EIS is also available for review during normal business hours at the following locations:

- Bureau of Land Management Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming.
- Bureau of Land Management High Desert District Office, 280 Highway 191 N., Rocks Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT: Pamela Murdock, Project Manager; 307–328–4215; P.O. Box 2407, 1300 N. Third Street, Rawlins, Wyoming 82301; *e-mail: WYMail_PCW_Windfarm@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or questions for the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM proposes to amend the 2008 Rawlins RMP for visual resources management (VRM) class designations. The Power Company of Wyoming, LLC (PCW) proposes to construct and operate a wind energy project south of Rawlins in Carbon County, Wyoming. The proposed project consists of 2 areas located approximately 9 miles apart within the Wind Site Testing and Monitoring Application Area—the Chokecherry site and the Sierra Madre site (CCSM)—totaling 222,689 acres of Federal, private, and State lands. Only a portion of the total land area would be

used for, or disturbed by, the project. The project proposal includes 1,000 wind turbine generators (WTG) and associated infrastructure, each capable of producing 1.5 to 3 megawatts (MW) with a total nameplate capacity of 1,500 to 3,000 MW of electrical power.

Public lands within the CCSM project area would be segregated under the authority contained in 43 CFR 2091.3–1(e) and 43 CFR 2804.25(e) for a period of 2 years, in order to process the ROW application filed on the described lands; this 2-year segregation period will commence on July 22, 2011. It has been determined that this segregation is necessary for the orderly administration of the public lands.

The temporary segregation period will terminate and the lands will automatically re-open to appropriation under the public land laws, including the mining laws, if one of the following events occurs: (1) Upon the BLM's issuance of a decision regarding whether to issue a ROW authorization for the wind energy generation proposal; (2) Upon publication in the **Federal Register** of a notice of termination of the segregation; or (3) Without further administrative action at the end of the segregation provided for in the **Federal Register** notice initiating the segregation, whichever occurs first. Any segregation made under this authority would be effective only for a period of up to 2 years, without the possibility of extension.

In accordance with 43 CFR 2091.3–1(e) and 2804.25(e), the following described public lands within the proposed project area are hereby segregated for a period of up to 2 years, subject to valid existing rights, from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, but not from leasing under the mineral leasing laws or disposal under the mineral material laws:

Sixth Principal Meridian

T. 16 N., R. 87 W.,
Sec. 5, lots 4, 5, 6, 11, and 12, N½; SW¼, and SW¼; SW¼; sec. 6, lots 1 to 21, inclusive, and SE¼; sec. 7, lots 1 to 4, inclusive, lots 9 and 10, and NW¼ NE¼; sec. 18, lots 3, 4, and 9.
T. 16 N., R. 88 W.,
Sec. 1, lots 11 to 23, inclusive;
Sec. 2, lots 11 to 27, inclusive;
Sec. 3, SW¼SW¼ and tract 38 A, B, C;
Sec. 4, lots 11 to 22, inclusive, and S½;
Sec. 5, lots 11 to 22, inclusive, and S½;
Sec. 6, lots 14 to 28, inclusive, and SE¼;
Sec. 9;
Sec. 10, lots 1 and 2, NE¼NE¼, NW¼NW¼, S½N½, and S½;
Sec. 11, lots 1 to 6, inclusive, S½NW¼, and SW¼;
Sec. 12, lots 1 and 2.
T. 17 N., R. 87 W.,
Sec. 4, lots 1 to 4, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 5, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 7, lots 2 to 4, inclusive, NE¼, E½W½, NE¼SE¼, and S½SE¼;
Sec. 8;
Sec. 9, W½E½ and W½;
Sec. 17;
Sec. 18, lots 5 to 19, inclusive;
Sec. 19, lots 7 and 8;
Sec. 20, E½ and S½SW¼;
Sec. 29, NW¼ (less SE¼SE¼SE¼NW¼), NW¼SW¼, S½SW¼, and SE¼;
Sec. 31, lots 2, 3, and 4, NE¼NE¼, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 32.
T. 17 N., R. 88 W.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 3, S½N½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, S½N½ and S½;
Sec. 6, lots 5 to 10, inclusive, S½NE¼, SE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 7, lots 1 to 4, inclusive, SW¼NE¼, E½W½, W½SE¼, and SE¼SE¼;
Sec. 8, N½, E½SW¼, and SE¼;
Secs. 9 and 10;
Sec. 11, W½NW¼;
Sec. 12, NE¼, E½NW¼, SW¼, W½SE¼, and SE¼SE¼;
Sec. 13, N½, N½S½, and SE¼SE¼;
Sec. 14, NW¼NE¼, S½NE¼, NW¼, and N½S½;
Sec. 15, NE¼ and N½SE¼;
Sec. 17;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 19, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20, W½E½ and W½;
Sec. 28, W½;
Sec. 29;
Sec. 30, lots 1, 2, and 3, NE¼, E½NW¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 31, lots 1 to 4, inclusive, NE¼NE¼, S½NE¼, E½W½, and SE¼;
Sec. 32;
Sec. 33, NW¼ and S½;
Sec. 34, NE¼ and S½;
Sec. 36, E½SE¼.
T. 17 N., R. 89 W.,
Sec. 1, lots 5 to 17, inclusive;
Sec. 2, lots 3 to 14, inclusive;
Sec. 3, lots 5 to 9, inclusive, and S½SE¼;
Sec. 4, lots 3 to 18, inclusive;
Sec. 6, lots 8 to 23, inclusive;
Sec. 11, N½;
Sec. 12, lots 1 to 4, inclusive, and W½;
Sec. 13, lots 1 to 4 inclusive, and NW¼.
T. 18 N., R. 85 W.,
Sec. 18, lots 1 thru 4, inclusive, E½ and E½W½;
Sec. 20;
Sec. 30, lots 1 to 4, inclusive, E½ and E½W½.
T. 18 N., R. 86 W.,
Secs. 14 and 16;
Sec. 18, lots 1 to 4, inclusive, E½ and E½W½;
Secs. 20 and 22;
Sec. 24, lots 1 to 16, inclusive;
Secs. 26 and 28;
Sec. 30, lots 1 to 4, inclusive, E½ and E½W½.
T. 18 N., R. 87 W.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 5 to 20, inclusive;
Sec. 6, lots 8 to 23 inclusive;
Secs. 8, 10, 12, 14, and 16;
Sec. 18, lots 5 to 20, inclusive;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 5 to 20, inclusive;
Sec. 31, lot 4, SE¼SW¼, and S½SE¼;
Sec. 32, SW¼SE¼;
Sec. 33, SW¼NE¼, S½NW¼, S½NW¼, and S½;
Sec. 34, N½, N½SW¼, and SE¼.
T. 18 N., R. 88 W.,
Sec. 2, lots 1 and 2, S½N½, and S½;
Sec. 4, lot 4, SW¼NW¼, and W½SW¼;
Sec. 8, NE¼, W½, NE¼SE¼, and S½SE¼;
Sec. 10, W½;
Secs. 12 and 14;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 20;
Sec. 22, N½NE¼, SE¼NE¼, NE¼NW¼, and S½;
Sec. 26, E½, NW¼NW¼, S½NW¼, and SW¼;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Sec. 32;
Sec. 34, N½ and SW¼;
Sec. 35, S½SE¼;
Sec. 36.
T. 18 N., R. 89 W.,
Sec. 10;
Sec. 12, lots 1 to 4, inclusive, and W½;
Secs. 14, 20, and 22;
Sec. 24, lots 1 to 4, inclusive, and W½;
Secs. 26 and 28;
Sec. 32, lots 1 to 12, inclusive, N½NE¼, and N½SE¼;
Sec. 34, lots 1 to 16, inclusive;
Sec. 35, S½SE¼.
T. 19 N., R. 85 W.,
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 8;
Sec. 10, NW¼NE¼, S½NE¼, NW¼, and S½;
Sec. 18, lots 1 thru 4, inclusive, E½, and E½W½.
T. 19 N., R. 86 W.,
Sec. 2, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 4, lots 5 to 20, inclusive;
Sec. 6, lots 8 to 23, inclusive;
Secs. 8, 10, and 12;
Sec. 14, W½E½, and W½;
Sec. 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 22, and 24.
T. 19 N., R. 87 W.,
Sec. 2, lots 1 to 4, inclusive, S½N½ and S½;
Sec. 4, lots 1 and 2, S½N½, and S½;
Sec. 6, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;

Secs. 8, 10, and 12;
T. 19 N., R. 88 W.,
Sec. 12.
T. 20 N., R. 85 W.,
Sec. 4, lots 1 to 10, inclusive, S½S½;
Sec. 6, lots 1 to 3, inclusive, lots 8 to 16, inclusive, and S½SE¼;
Secs. 8, 10, 14, and 16;
Sec. 18, lots 5 to 12, inclusive, and E½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 5 to 10, inclusive, E½, and E½SW¼;
Secs. 32 and 34.
T. 20 N., R. 86 W.,
Sec. 2, lots 1 to 4, inclusive, and S½;
Sec. 4, lots 1 to 4, inclusive, and S½;
Sec. 6, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Secs. 8, 10, 12, 14, and 16;
Sec. 18, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 20, 22, 24, 26, and 28;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32, 34, and 36.
T. 20 N., R. 87 W.,
Sec. 2, lots 1 to 4, inclusive, and SW¼;
Sec. 4, lots 5 to 11, inclusive;
Sec. 6, lots 1 to 6, inclusive, E½SW¼, and SE¼;
Secs. 8 and 10;
Sec. 12, lots 1 to 16, inclusive;
Sec. 14;
Sec. 18 lots 1 to 4, inclusive, and E½E½W½;
Secs. 20 and 22;
Sec. 24 lots 1 to 16, inclusive;
Sec. 26, E½, E½W½, NW¼NW¼, and SW¼SW¼;
Sec. 28;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 and 34.
T. 20 N., R. 88 W.,
Secs. 12 and 24.
T. 21 N., R. 86 W.,
Sec. 24, S½ and S½N½;
Sec. 26;
Sec. 30, lots 1 to 4, inclusive, E½, and E½W½;
Secs. 32 and 34;

The areas described aggregate approximately 107,175 acres in Carbon County, Wyoming.

The BLM Rawlins Field Office has been designated as the lead Federal agency for the CCSM Draft RMP Amendment/Draft EIS. Cooperating agencies include the U.S. Forest Service, the State of Wyoming, the Saratoga-Encampment-Rawlins Conservation District, the Little Snake River Conservation District, Medicine Bow Conservation District, Carbon County, and the City of Rawlins.

Scoping took place from July 18, 2008, to September 23, 2008, and involved 4 public meetings held in Saratoga, Rawlins (2), and Baggs, Wyoming. Public and cooperating agency concerns include potential impacts to sensitive species and their habitats, cultural resources, visual resources, public access, project phasing, and reclamation. Through internal and external scoping, the BLM identified the following resources as issues of concern that are analyzed in detail: Avian species; fish and wildlife, including special status and threatened or endangered species; cultural resources; visual resources; grazing and rangelands; reclamation; water resources; air quality; public access; and recreation. For analysis purposes, the document has been arranged into 2 volumes dealing with the RMP Amendment decision and the CCSM project decision.

Volume I of the Draft RMP Amendment/Draft EIS describes and analyzes VRM planning alternatives for the public lands administered by the BLM Rawlins Field Office within the planning area. The proposed project is located in an area currently managed as VRM classes II and III. With the exception of VRM classes, wind energy development within and adjacent to the CCSM project area conforms to the Rawlins RMP. The Draft RMP Amendment/Draft EIS planning area includes and extends 30 miles beyond the CCSM project area boundary, comprising approximately 3.6 million acres in Carbon County in south central Wyoming. Within this area, the BLM administers approximately 1.3 million acres of public land surface and Federal mineral estate. The BLM administers an additional 100,000 acres of mineral estate under State and privately owned surface. The BLM decisions would apply only to public lands and to the Federal mineral estate administered by the BLM.

The BLM invites public comment on the proposed planning amendment. Comments may be sent to the BLM Rawlins Field Office at the address above. The RMP Amendment will concentrate on 8 specific issues identified through public scoping for the 2008 Rawlins RMP.

Issue 1: Energy Development—The planning amendment addresses energy resource decision (*i.e.,* oil and gas, coal, solar, wind energy and transportation network) conflicts with the proposed VRM planning amendments.

Issue 2: Special Management Designations—The planning amendment addresses Special Designations/Management Areas decision conflicts with the proposed VRM planning amendment decisions. No Rawlins RMP decisions for the Sand Hills/JO Ranch Area of Critical Environmental Concern would change as a result of the proposed VRM planning amendment.

Issue 3: Resource Accessibility—The planning amendment addresses public accessibility and constraints of VRM Class designations in the checkerboard or other intermixed landownership patterns.

Issue 4: Fire Management Wildland-Urban Interface—New demands are being placed on public lands because of growth in and around some cities, towns, rural developments and subdivisions in the planning area. Wildland-urban interface decisions may be affected by VRM amendments.

Issue 5: Special Status Species Management—VRM class designations may influence maintenance or sustainability of special status species.

Issue 6: Water Quality—VRM class designations may influence maintenance or attainment of water quality standards.

Issue 7: Vegetation Management—Due to conflicting demands for consumptive and non-consumptive uses of the vegetation resources in the planning area, the amendment will address the influence of VRM class designations on non-consumptive and consumptive uses.

Issue 8: Recreation, Cultural Resources and Paleontological Resource Management—The planning area contains cultural and paleontological resources and their associated setting, as well as a variety of recreation opportunities. VRM amendments may influence these resources and opportunities.

Four planning alternatives were analyzed in detail:

1. *Alternative 1:* Continue existing management direction (the No Action Alternative);
2. *Alternative 2:* Provide for development and use opportunities while minimizing adverse impacts to visual resources;
3. *Alternative 3:* Provide for compatible development and use while maintaining focus on greater conservation of visual resources; and
4. *Alternative 4:* Provide for development opportunities while protecting visual resources (the BLM Preferred Alternative).

Volume II of the Draft RMP Amendment/Draft EIS addresses the direct, indirect, and cumulative environmental impacts of constructing and operating the CCSM wind generation facility (proposed action). Alternatives to the proposed action were developed in response to issues and concerns raised during the NEPA scoping period. All alternatives conform with the preferred planning alternative identified in Volume I. Volume II of the EIS analyzes the direct, indirect and

cumulative project impacts to determine whether the application area is suitable for development of the proposed project or for an alternative development strategy. The impact analysis is based on resource-specific assumptions, estimated project disturbance, and appropriate project-specific stipulations. The decision the BLM will make as a result of the analysis is whether to authorize, and under what terms and conditions, the development, operation, maintenance, and reclamation of a wind farm on public lands.

The No Action Alternative would deny PCW's request to develop wind energy on public lands and deny any request to provide access to private lands for wind development within the application area.

Alternative 1R (the BLM preferred alternative) considers authorizing wind development in PCW's application area to accommodate 1,000 turbines. This alternative, a revision of PCW's original proposed action, was submitted by the applicant in response to issues raised during scoping. This alternative was developed in consideration of a comprehensive review of information pertaining to wildlife issues in the project area and would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 2 considers authorizing wind development to accommodate 1,000 turbines in PCW's application area only north of T. 18 N. to keep development primarily within the checkerboard land ownership pattern. This alternative was developed in response to concerns regarding visual impacts to areas with high recreational values. More restrictive Greater Sage-grouse stipulations would apply to public lands than in the other alternatives. This alternative would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 3 considers authorizing wind development to accommodate 1,000 turbines in the Chokecherry portion and only the area from the eastern half of T. 18 N., R. 88. W. to the east of the Sierra Madre portion of PCW's application area. All lands would be excluded south of T. 18. N. and the western half of T. 18. N., R. 88 W. This alternative was developed in response to concerns regarding existing VRM Class II areas as well as areas with greater wildlife concerns. This alternative would require amending the VRM decisions in the 2008 Rawlins RMP.

Alternative 4 considers no placement of WTGs on public lands within either the Chokecherry site or Sierra Madre site. This alternative, however, considers that the BLM would provide ROW grants to PCW for the public lands that would allow PCW to develop wind energy facilities on the privately-held lands. The BLM would apply required restrictions and timing stipulations to public lands for requested access points. This alternative was developed in response to the overall concerns raised with developing a wind farm on public lands and the associated impacts. This alternative would not require amending the VRM decisions in the 2008 Rawlins RMP. Volume II considered 12 additional alternatives but eliminated them from detailed study. These alternatives did not meet the purpose and need of the proposed action, or were incorporated into alternatives analyzed in detail.

The purpose of this EIS is to provide the public and decision-makers with sufficient information to understand the environmental consequences of implementing the project. A recent inventory of wilderness characteristics determined that wilderness characteristics are not present. If the analysis results in the decision to approve wind energy development, PCW may submit up to four Plans of Development (POD) for separate aspects of the project including: Turbine siting in the Chokeberry development area, turbine siting in the Sierra Madre development area, haul road development throughout the project area, and transmission lines. The site-specific PODs would be tiered to the analysis and decisions in the EIS and ROD for the CCSM wind farm project. Site-specific impacts associated with the siting/location of individual project components not analyzed in the EIS would be evaluated in subsequent NEPA analyses based on site-specific proposals within any selected alternative boundary. ROW grants for these PODs, if issued, will include site-specific terms and conditions analyzed either in the POD NEPA documents or in the CCSM project EIS. Following the public comment period, the BLM will prepare a proposed RMP Amendment/CCSM Final EIS. The BLM will respond to each substantive comment by making appropriate revisions to the document or by explaining why a comment did not warrant a change.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1506.6 and 1506.10.

Donald A. Simpson,

State Director.

[FR Doc. 2011–18274 Filed 7–21–11; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVC0100000 L91310000.EJ0000.LXSIGEOT0000 241A; NVN 087795; 11–08807; MO# 4500021655; TAS: 14X5575]

Notice of Availability of the Final Environmental Impact Statement for the Salt Wells Energy Projects, Churchill County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969, as amended (NEPA), the Bureau of Land Management (BLM) has prepared a Final Environmental Impact Statement (EIS) for the Salt Wells Energy Projects and by this notice is announcing its availability.

DATES: The BLM will not issue a final decision on the proposal for at least 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the Salt Wells Energy Projects Final EIS are available in the BLM Carson City District, Stillwater Field Office at 5665 Morgan Mill Road, Carson City, Nevada 89701. The Final EIS is also available online at:*http://www.blm.gov/nv/st/en/fo/carson_city_field.html.*

FOR FURTHER INFORMATION CONTACT: Colleen Sievers, (775) 885–6000, or *e-mail: saltwells_eis@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during 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 BLM Stillwater Field Office received separate proposed geothermal utilization plans and applications for facilities construction permits from Vulcan Power Company (Vulcan) and Ormat

Technologies, Inc. (Ormat), and an electric transmission right-of-way (ROW) application from Sierra Pacific Power Company (SPPC), for proposed geothermal energy projects covering a combined area of approximately 24,152 acres in the Salt Wells area about 15 miles east of Fallon, Nevada. Vulcan proposes the development of as many as four geothermal power plants and associated facilities. Ormat proposes the development of one geothermal power plant and associated facilities. SPPC proposes 22 miles of above-ground electrical transmission lines, electrical substations, and switching stations. The proposed facilities would be sited on a combination of private property and public land; the public land is managed by the BLM and the U.S. Bureau of Reclamation (BOR). Due to similar timing, geographic area, and type of action, the BLM is analyzing the proposals in one EIS. The BLM will issue three separate Records of Decision, one for each proposed project. The BOR will issue its own Record of Decision for the SPPC transmission line where the line crosses BOR-managed lands. The BOR would grant its own ROW for the power line, but, under the geothermal development regulations (43 CFR 3272.13), the BOR, as surface management agency, would grant its consent to development on lands it manages and the BLM may then issue a decision to approve the development.

The Vulcan project proposal is to construct as many as four 30- to 60-megawatt (MW) binary or dual-flash geothermal power plants and associated facilities at five possible locations for a total net output of 120 MW. Each site includes production and injection wells, pipelines, a substation, interconnection lines to the proposed substation, and access roads. The Vulcan project may require up to 46 geothermal production and injection wells. Twenty of these wells have been analyzed in two previous environmental assessments (EA): Salt Wells Geothermal Drilling EA for Ten Drilling Wells, EA–NV–030–07–05 (February 6, 2007), and Salt Wells Geothermal Exploratory Drilling Program EA for Ten Wells, DOI– BLM–NV–C010–2009–0006–EA (April 24, 2009).

The Ormat project proposal includes the construction and operation of a 40-MW binary combination wet- and air-cooled geothermal power plant, a substation, a switching station, and an associated transmission line between the power plant and switching station. These facilities would be developed on an 80-acre private parcel. Ormat proposes to construct up to 13 well pads with associated pipelines and roads on Federal lands managed by the BOR. The proposed well pads would be in addition to 12 well pads previously analyzed in the Carson Lake Geothermal Exploration Project EA–NV–030–07–006 and authorized by the BLM on July 25, 2008. The BLM is responsible for managing geothermal resources on BOR lands under the regulations found at 43 CFR 3200.

The SPPC proposal includes construction of a new substation, 22 miles of single circuit 230-kilovolt (kV) transmission line, two 230-kV switching stations, and two 60-kV electricity lines.

Analysis through an EIS provides for the orderly development of commercial-scale geothermal power generation facilities, associated infrastructure, and a transmission line in a manner that will protect natural resources and prevent unnecessary or undue degradation to the public lands following NEPA and regulations at 40 CFR 1500 *et seq*. In accordance with 43 CFR 2800 and 43 CFR 3200, the BLM is authorized to process the applications to construct, operate, and maintain the proposed Salt Wells Energy Projects. Title V of the Federal Land Policy and Management Act (FLPMA) authorizes the Secretary of the Interior (through the BLM) to grant ROWs on public lands for the purposes of generating and transmitting electric energy. These projects are in conformance with the BLM Carson City District Office Consolidated Resource Management Plan (2001).

In addition to the proposed actions, the BLM analyzed the following action alternatives. For the Vulcan project, an alternative switching station and interconnection 230-kV transmission line is proposed should SPPC elect not to build its project. For the Ormat project, the BLM developed an alternative to relocate specific well sites and a portion of a pipeline to maintain consistency with lease stipulations and land use plan decisions to protect riparian vegetation and surface waters within canals. For the SPPC project, 3 alternative routes for the proposed 230-kV transmission line and an alternative examining the construction of an additional fiber optic line to connect communications from Highway 50 are considered to minimize impacts to airspace at the nearby Fallon Naval Air Station. As required under NEPA, the Final EIS analyzes a no-action alternative for each of the proposed projects.

The BLM considered the provisions of the Energy Policy Act of 2005 and Secretarial Orders 3283—''Enhancing Renewable Energy Development on the Public Lands'' and 3285A1—''Renewable Energy Development by the Department of the Interior,'' in the EIS.

A Notice of Intent to Prepare an EIS for the Salt Wells Energy Projects, Churchill County, Nevada, was published in the **Federal Register** on September 11, 2009 (74 FR 46787). The BLM held one public scoping meeting in Fallon, Nevada, on October 21, 2009. The formal scoping period ended on November 10, 2009. On January 28, 2011, the BLM published in the **Federal Register** a Notice of Availability for the Draft EIS for the Salt Wells Energy Projects and initiated a 60-day public comment period (76 FR 5198). A public meeting on the Draft EIS was held in Fallon, Nevada on March 3, 2011. Thirty comment letters were received; the responses are included in the Final EIS. The majority of comments requested minimizing impacts to private landowners or additional analysis of water resources and wildlife. Public comments also identified potential conflicts with the SPPC proposed action and a conservation easement. A cooperating agency meeting was held on April 14, 2011 and through a collaborative process a new alternative was developed that modified Draft EIS Alternative 2 by rerouting about 2 miles of the transmission line. A third SPPC alternative is analyzed and included in the Final EIS.

The BLM has selected a preferred alternative for each project. For the SPPC project, Alternative 3 is the preferred alternative because it was developed through a collaborative process that modified the route to be compatible with surrounding land uses, to minimize impacts to local residents, and to address wildlife concerns. For the Ormat project, Alternative 1 is selected as the preferred alternative to help protect riparian areas and wetlands. For the Vulcan project, the Proposed Action is selected as the preferred alternative.

Authority: 43 CFR parts 2800 and 3200.

Teresa J. Knutson,

Manager, Stillwater Field Office, BLM Carson City District.

[FR Doc. 2011–18331 Filed 7–20–11; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–0711–7884; 2280–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before July 2, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 8, 2011. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

COLORADO

Adams County

Brannan Sand and Gravel Pit #8—Lake Sangraco Boathouse Complex, Address Restricted, Denver

Larimer County

Peep O Day Park, 5445 Wild Ln., Loveland

Routt County

Solandt Memorial Hospital, 150 W. Jackson St., Hayden

DELAWARE

New Castle County

Rodney Square Historic District, Buildings fronting Rodney Sq. at 10th, 11th, Market and King Sts., Wilmington

IDAHO

Latah County

Bohman, Axel, House, 116 N. Main St. Troy
Troy Hospital, 604 S. Main St., Troy

MINNESOTA

Crow Wing County

Milford Mine Historic District, 1 mi. SW of jct. of MN 6 & Cty. Rd. 30, Wolford

MONTANA

Missoula County

Target Range Elementary School, 4095 South Ave., W., Missoula

NEBRASKA

Custer County

First National Bank—Steinmeier Building, 624 Main St., Ansley

Dodge County

Durkee, Charles T. House, 1125 N. Broad St., Fremont

Douglas County

Scottish Rite Cathedral 202 S. 20th St., Omaha

NEW MEXICO

Santa Fe County

La Armeria de Santa Fe, 1050 Old Pecos Trail, Santa Fe

WISCONSIN

Rock County

Grove Street Historic District, 103, 111, 112, 116, 119, 125, 126, 133 & 134 Grove St., Evansville
South First Street Residential Historic District, 341, 348, 349, 402, 408, 409, 412, 419, 433, 439 & 443 S. 1st St., Evansville

WYOMING

Sheridan County

Sheridan County Fairgrounds Historic District, 1753 Victoria St., Sheridan

[FR Doc. 2011–18471 Filed 7–21–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0277]

Agency Information Collection Activities: Proposed Collection; Comments Requested: Revisions and Extension of a Currently Approved Collection; OVC Training and Technical Assistance Center (TTAC) and OJJDP National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package

ACTION: 30-Day Notice of Information Collection Under Review.

The Department of Justice, Office of Justice Programs 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 of 1995. The proposed information collection was previously published in the **Federal Register** Volume 76, Number 95, pages 28459–28460 on May 17, 2011 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until August 22, 2011. This process is conducted in accordance with 5 CFR 1320.10.

Written comments concerning this information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: DOJ Desk Officer. The best way to ensure your comments are received is to e-mail them to *oira_submission@omb.eop.gov* or fax them to 202–395–7285. All comments should reference the 8 digit OMB number for the collection or the title of the collection. If you have questions concerning the collection, please call Janet Chiancone at 202–353–9258 or the DOJ Desk Officer at 202–395–3176.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments 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/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 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.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *The Title of the Form/Collection:* OVC TTAC and OJJDP NTTAC Evaluation Feedback Form Package.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office for Victims of Crime and Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(5) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State, Local, or Tribal. Other: Federal Government, Individuals or households; Not-for-profit institutions; Businesses or other for-profit. The Office for Victims of Crime Training and Technical Assistance Center (TTAC) and the Office for Juvenile Justice and Delinquency Prevention National Training and Technical Assistance Center (NTTAC) Evaluation Feedback Form Package is designed to collect the data necessary to continuously assess the outcome and impact of the assistance provided for both monitoring and accountability purposes and to continuously assess and meet the needs of the field. OJJDP NTTAC will send these forms to technical assistance (TA) recipients, conference attendees, and product recipients, to capture important feedback on the recipient's satisfaction with the quality, efficiency, referrals, and resources provided and assess the recipients additional training and TA needs.

The data will then be used to advise NTTAC on ways to improve the support provided to its users and the juvenile justice field at-large.

(6) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 24312.75 respondents will complete forms and the response time will range from .03 hours to 1 hour.

(7) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,998.45 total annual burden hours associated with this collection.

If additional information is required contact: Jerri Murray, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, Two Constitution Square, 145 N Street, NE., Room 2E–508, Washington, DC 20530.

Jerri Murray,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 2011–18484 Filed 7–21–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OVC) Docket No. 1559]

Establishment of the SANE/SART AI/AN Initiative Committee

AGENCY: Office for Victims of Crime, Justice.

ACTION: Notice of Establishment of Federal Advisory Committee.

SUMMARY: The National Coordination Committee on the Sexual Assault Nurse Examiner (SANE) Sexual Assault Response Team (SART) American Indian/Alaskan Native (AI/AN) Initiative (''SANE/SART AI/AN Initiative Committee'' or ''Committee'') is being established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C., App. 2. The SANE/SART AI/AN Initiative Committee will provide the Office for Victims of Crime, a component of the U.S. Department of Justice's Office of Justice Programs, with valuable advice about the complex issues that arise when AI/AN law enforcement agencies and their Federal, State and local counterparts attempt to coordinate a response to the victims of sexual assault. The Committee will also advise about the unique cultural issues faced by victims of sexual assault within the AI/AN community. The advice provided by the Committee will assist OVC in ensuring that its strategies, policies, and Initiative goals are responsive to the challenges faced by both those who respond to the victims of sexual assault within AI/AN communities and the victims themselves. The SANE/SART AI/AN Initiative Committee is necessary and in the public interest. The Committee's charter is subject to renewal and will expire two years from its filing. The Committee is continuing in nature, to remain functional until the Attorney General determines that all necessary duties have been performed.

FOR FURTHER INFORMATION CONTACT: Kathleen Gless, Designated Federal Officer (DFO) for the SANE/SART AI/AN Initiative Committee, Office for Victims of Crime, Office of Justice Programs, 810 7th Street, NW., Washington, DC 20531; *Phone:* (202) 307–5983 [*Note:* this is not a toll-free number].

Joye E. Frost,

Acting Director, Office for Victims of Crime.

[FR Doc. 2011–18597 Filed 7–21–11; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Rehabilitation Action Report

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Office of Workers' Compensation Programs (OWCP) sponsored information collection request (ICR) titled, ''Rehabilitation Action Report,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 19, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Office of Workers' Compensation Programs (OWCP), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: Form OWCP–44 is submitted to the OWCP by contractors hired to provide vocational rehabilitation services. Form OWCP–44 gives prompt notification of key events that may require OWCP action in the vocational rehabilitation process. For example, when a disabled worker returns to work, benefits must be promptly adjusted to avoid an overpayment. All items are completed by the rehabilitation counselor from information in his or her records.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number.

See 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1240–0008. The current OMB approval is scheduled to expire on July 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 25, 2011 (76 FR 16841).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1240–0008. The OMB is particularly interested in 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Office of Workers' Compensation Programs (OWCP).

Title of Collection: Rehabilitation Action Report.

OMB Control Number: 1240–0008.

Affected Public: Private Sector, Businesses or other for-profits.

Total Estimated Number of Respondents: 6050.

Total Estimated Number of Responses: 6050.

Total Estimated Annual Burden Hours: 1010.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18487 Filed 7–21–11; 8:45 am]

BILLING CODE 4510–CR–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application of the Employee Polygraph Protection Act

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Application of the Employee Polygraph Protection Act,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 22, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Wage and Hour Division (WHD), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* 202–395–6929/*Fax:* 202–395–6881 (these are not toll-free numbers), *e-mail: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: These third-party notifications and recordkeeping requirements help ensure polygraph examinees receive the protections and rights provided by the Employee Polygraph Protection Act. The DOL is revising the format of Form WH–1481 to show the WHD logo and update the OMB Control Number. The DOL does not believe these cosmetic changes affect the public burden; however, as these are considered formatting issues, this submission is characterized as a revision.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1235–0005. The current OMB approval is scheduled to expire on September 30, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on January 27, 2011 (76 FR 4946).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1235–0005. The OMB is particularly interested in 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Wage and Hour Division (WHD).

Title of Collection: Application of the Employee Polygraph Protection Act.

OMB Control Number: 1235–0005.

Affected Public: Private Sector—Businesses or other for-profits and Not-for-profit institutions.

Total Estimated Number of Respondents: 85,200.

Total Estimated Number of Responses: 757,400.

Total Estimated Annual Burden Hours: 68,739.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18486 Filed 7–21–11; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Flexibility Program

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the revised Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Workforce Flexibility Program,'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before August 22, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or sending an e-mail to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–6929/Fax: 202–395–6881 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129 (this is not a toll-free number) or by e-mail at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR allows Governors to request authority from the Secretary of Labor to waive certain provisions of the Workforce Investment Act Title I programs. Applications are submitted to the ETA National Office on behalf of states and local areas to implement reforms of State Workforce Investment systems.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0432. The current OMB approval is scheduled to expire on August 31, 2011; however, it should be noted that information collections submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on March 18, 2011 (76 FR 14995).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0432. The OMB is particularly interested in 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Workforce Flexibility Program.

OMB Control Number: 1205–0432.

Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 5.

Total Estimated Number of Responses: 21.

Total Estimated Annual Burden Hours: 320.

Total Estimated Annual Other Costs Burden: $0.

Dated: July 18, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–18479 Filed 7–21–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Council members shall be persons qualified to appraise the programs instituted under ERISA. Appointments

are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire on November 14, 2011. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) investment management; (4) corporate trust; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council.

Accordingly, notice is hereby given that any person or organization desiring to nominate one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans, to represent any of the groups or fields specified in the preceding paragraph, may submit nominations to Larry Good, ERISA Advisory Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5623, Washington, DC 20210, or to *good.larry@dol.gov.* Nominations (including supporting nominations) must be received on or before September 16, 2011. Please allow three weeks for regular mail delivery to the Department of Labor. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization.

Nominations should:

- State the person's qualifications to serve on the Advisory Council.
- State that the candidate will accept appointment to the Council if offered.
- Include the position for which the nominee is nominated.
- Include the nominee's full name, work affiliation, mailing address, phone number, and e-mail address.
- Include the nominator's full name, mailing address, phone number, and e-mail address.
- Include the nominator's signature, whether sent by e-mail or otherwise.

In selecting ERISA Advisory Council members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Nominees will be contacted to provide information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of 15–20 days per year.

Signed at Washington, DC, this 18th day of July, 2011.

Michael L. Davis,

Deputy Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2011–18480 Filed 7–21–11; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting; Notice of Matter To Be Deleted From the Agenda of a Previously Announced Agency Meeting

Federal Register CITATION OF PREVIOUS ANNOUNCEMENT: July 19, 2011 (76 FR 42736).

TIME AND DATE: 10 a.m., Thursday, July 21, 2011.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

Matter To Be Deleted

1. Final Rule—Parts 700, 701, 702, and 741 of NCUA's Rules and Regulations, Net Worth and Equity Ratio Definitions.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* 703–518–6304.

Mary Rupp,

Board Secretary.

[FR Doc. 2011–18687 Filed 7–20–11; 4:15 pm]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Request for Comments.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*). The full submission may be found at: *http://www.reginfo.gov/public/do/PRAMain.* Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, *Attention:* Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title: Survey of Graduate Students and Postdoctorates in Science and Engineering.

OMB Approval Number: 3145–0062.

Summary of Collection: The GSS is a census of all eligible academic institutions and all departments in science and engineering and health (SEH) programs in the United States. The GSS is the only national survey that collects information on the characteristics of graduate students and postdoctorates in specific science, engineering, and health disciplines at the department level. The characteristics collected include race/ethnicity, citizenship, gender, sources and mechanisms of financial support for graduate students and postdoctorates; and type of doctoral degree for the postdoctorates and other nonfaculty research staff with doctorates.

The survey will be collected in conformance with the National Science Foundation Act of 1950, as amended, and the Privacy Act of 1974. Responses from the institutions are voluntary. Survey results will be used for research

or statistical purposes, analyzing data, and preparing scientific reports and articles. All tables and reports are made available in various electronic formats on the Web (*http://www.nsf/gov/statistics/*). The survey results are also into the Web-based Computer-Aided Science Policy Analysis and Research (WebCASPAR) database system. The URL for WebCASPAR is *http://caspar.nsf.gov/webcaspar.* A public release file is also made available on the World Wide Web.

Comment: On May 11, 2011 we published in the **Federal Register** (76 FR 27369) a 60-day notice of our intent to request reinstatement of this information collection authority from OMB. In that notice, we solicited public comments for 60 days ending July 11, 2011. One comment was received from the public notice. The comment came from Jean Public via e-mail on May 12, 2011. Ms. Public objected to the information collection and suggested less frequent collection.

Response: We responded to Ms. Public on May 26, 2011 describing the program, the survey frequency and the cost issues raised by Ms. Public. NSF believes that because the comment does not pertain to the collection of information on the required forms for which NSF is seeking OMB approval NSF is proceeding with the clearance request.

Need and Use of the Information: The Federal government, universities, researchers, and others use the information extensively. The National Science Foundation and the National Institutes of Health, publishes statistics from the survey in several reports, but primarily in the annual report series, ''Survey of Graduate Students and Postdoctorates in Science and Engineering'', and the congressionally mandated biennial publication series, ''Science and Engineering Indicators'' and ''Women, Minorities and Persons with Disabilities in Science and Engineering''.

Description of Respondents: Individuals.

Number of Respondents: 15,395.

Frequency of Responses: Annually.

Total Burden Hours: 40,201.

Dated: July 19, 2011.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2011–18590 Filed 7–21–11; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0262]

Guidance for Fuel Cycle Facility Change Processes

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; extension of comment period.

SUMMARY: On July 14, 2011 (76 FR 41527), the U.S. Nuclear Regulatory Commission (NRC or Commission) re-issued Draft Regulatory Guide, DG–3037, ''Guidance for Fuel Cycle Facility Change Processes'' in the **Federal Register** for a 30 day public comment period. The NRC is extending the public comment period for DG–3037 from August 12, 2011 to September 16, 2011.

DG–3037 describes the types of changes for fuel cycle facilities for which licensees are to seek prior approval from the NRC. The guidance discusses how licensees can evaluate potential changes to determine whether NRC approval is required before implementing a change. This regulatory guide also describes the level of information that the staff of the NRC considers acceptable for use in documenting and reporting changes made without prior NRC approval.

DATES: Submit comments by September 16, 2011. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: Please include Docket ID NRC–2009–0262 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–2009–0262. 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 regulatory guide 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*. The draft regulatory guide is available electronically under ADAMS Accession Number ML110960051.
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this regulatory guide can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2009–0262.

FOR FURTHER INFORMATION CONTACT: Kevin Morrissey, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *telephone:* 301–492–3130, *e-mail: Kevin.Morrissey@nrc.gov,* or, R. A. Jervey, *telephone:* 301–251–7404, *e-mail: Richard.Jervey@nrc.gov*.

SUPPLEMENTARY INFORMATION: On July 14, 2011 (76 FR 41527), the NRC published a notice of issuance and availability of Draft Regulatory Guide DG–3037, ''Guidance for Fuel Cycle Facility Change Processes.'' By e-mail

dated July 7, 2011, the Nuclear Energy Institute (ADAMS Accession No. ML111930008) requested an extension of the stated comment period for the purpose of providing sufficient review while attending planned public meetings related to the subject matter of the proposed guide. It is the desire of the NRC to receive comments of a high quality from all stakeholders. Several factors have been considered in granting an extension. The requested comment period extension is reasonable and does not affect NRC deadlines. The additional time will allow stakeholders to discuss the proposed guide during related meetings. Therefore the comment submittal period is extended from the original date of August 12, 2011 to September 16, 2011.

Dated at Rockville, Maryland, this 13th day of July 2011.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2011–18606 Filed 7–21–11; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Information Collection Requests Under OMB Review; Proposed Collection of Information

AGENCY: Peace Corps.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Peace Corps invites the general public to comment on this request for approval of a new proposed information collection, Peace Corps Response Application (OMB Control Number 0420—pending). This process is conducted in accordance with 5 CFR 1320.10.

DATES: Comments regarding this collection must be received on or before August 22, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. *Attention:* Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcf@peacecorps.gov*. Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: This information is used by Peace Corps Response staff to perform initial screening for potential candidates for specific Peace Corps Response assignments. The Peace Corps Response Application is completed by applicants for Peace Corps Response assignments to provide basic information concerning technical and language skills, and availability for Peace Corps Response assignments.

Title: Peace Corps Response Application Form.

OMB Control Number: [0420—pending].

Type of Review: New.

Respondents: Returned Peace Corps Volunteer and general public.

Burden to the Public:

(a) Estimated number of respondents: 2,500.

(b) Frequency of response: One time.

(c) Estimated average burden per response: 60 minutes.

(d) Estimated total reporting burden: 2,500 hours.

(e) Estimated annual cost to respondents: $0.00.

This notice issued in Washington, DC, on July 18, 2011.

Earl W. Yates,

Associate Director, Management.

[FR Doc. 2011–18532 Filed 7–21–11; 8:45 am]

BILLING CODE 6051–01–P

PEACE CORPS

Information Collection Requests under OMB Review

AGENCY: Peace Corps.

Proposed Collection of Information

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The Peace Corps will be submitting the following information collection request to the Office of Management and Budget (OMB) for approval of an existing collection in use without an OMB Control Number. In compliance with the Paperwork Reduction Act of 1995 (44 USC Chapter 35), the Peace Corps invites the general public to comment on this request for approval of an existing collection in use without an OMB Control Number, Peace Corps Response Applicant Personal and Professional Reference forms.

DATES: Comments regarding this collection must be received on or before August 22, 2011.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB approval number and should be sent via e-mail to: *oira_submission@omb.eop.gov* or fax to: 202–395–3086. Attention: Desk Officer for Peace Corps.

FOR FURTHER INFORMATION CONTACT: Denora Miller, FOIA Officer, Peace Corps, 1111 20th Street, NW., Washington, DC 20526, (202) 692–1236, or e-mail at *pcfr@peacecorps.gov.* Copies of available documents submitted to OMB may be obtained from Denora Miller.

SUPPLEMENTARY INFORMATION: This information collection is used by Peace Corps Response staff to learn from someone, who knows a volunteer applicant and his or her background, whether the applicant possesses the necessary characteristics and skills to serve as a Peace Corps Response Volunteer.

Title: Reference Form for Peace Corps Response Candidates (Professional).

Reference Form for Peace Corps Response Candidates (Personal).

OMB Control Number: [0420-pending].

Type of Review: Existing collection in use without an OMB Control Number.

Respondents: Returned Peace Corps Volunteer and general public.

Burden to the Public:

Estimated number of applicants—2,500.

Estimated number of applicants who submit references—500.

Estimated number of reference required per applicant—2.

Estimated number of reference forms received—1,000.

Frequency of response—One time.

Estimated average time to respond:—10 minutes.

Annual burden hours—167 hours.

Estimated annual cost to respondents—$0.00.

This notice issued in Washington, DC, on July 18, 2011.

Earl W. Yates,

Associate Director for Management.

[FR Doc. 2011–18553 Filed 7–21–11; 8:45 am]

BILLING CODE 6051–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Verification of Who Is Getting Payments, RI 38–107 and RI 38–147

AGENCY: U.S. Office of Personnel Management.

ACTION: 60-Day Notice and request for comments.

SUMMARY: The Retirement Services, Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension, without change, of a currently approved information collection request (ICR) 3206–0197, Verification of Who is Getting Payments. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until September 20, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to U.S. Office of Personnel Management, Linda Bradford (Acting) Deputy Associate Director, Retirement Operations, Retirement Services, 1900 E Street, NW., Room 3305, Washington, DC 20415–3500 or sent via electronic mail to *Martha.Moore@opm.gov.*

FOR FURTHER INFORMATION CONTACT: A copy of this ICR with applicable supporting documentation may be obtained by contacting the Publications Team, Office of Personnel Management, 1900 E Street, NW., Room 4332, Washington, DC 20415, Attention: Cyrus S. Benson, or sent via electronic mail to *Cyrus.Benson@opm.gov* or faxed to (202) 606–0910.

SUPPLEMENTARY INFORMATION: RI 38–107, Verification of Who is Getting Payments, is designed for use by the Retirement Inspection Branch when OPM, for any reason, must verify that the entitled person is indeed receiving the monies payable. RI 38–147, Verification of Who is Getting Payments, collects the same information and is used by other groups within Retirement Operations. Failure to collect this information would cause OPM to pay monies absent the assurance of a correct payee.

Analysis

Agency: Retirement Operations, Retirement Services, Office of Personnel Management.

Title: Verification of Who is Getting Payments.

OMB Number: 3206–0197.

Frequency: On occasion.

Affected Public: Individuals or Households.

Number of Respondents: 25,400.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 4,234.

U.S. Office of Personnel Management.

John Berry,

Director.

[FR Doc. 2011–18599 Filed 7–21–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Revision of an Existing Information Collection, USAJOBS

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The U.S. Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on a revised information collection request (ICR) 3206–0219, USAJOBS. As required by the Paperwork Reduction Act of 1995, (Pub. L. 104–13, 44 U.S.C. chapter 35) as amended by the Clinger-Cohen Act (Pub. L. 104–106), the Office of Management and Budget (OMB) is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on June 22, 2011 at Volume 76 FR No. 120 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 22, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: USAJOBS is the official Federal Government source for Federal jobs and employment information. The Applicant Profile and Resume Builder are two components of the USAJOBS application system. USAJOBS reflects the minimal critical elements collected across the Federal Government to assess an applicant's qualifications for Federal jobs under the authority of sections 1104, 1302, 3301,

3304, 3320, 3361, 3393, and 3394 of title 5, United States Code. This revision proposes to in part, permit the migration of USAJOBS to a new platform. In addition, this revision proposes to:

(A.) Discontinue the use of the Application for Federal Employment Optional Form 612. This action is being taken to facilitate a more seamless employment application process for both Federal agencies and job seekers, consistent with the goals of Federal hiring reform.

(B.) Revise the collection of Demographic Information on Applicants by removing the sourcing question ''How did you learn about this position?'' along with the pre-populated answer choices provided for this question.

(C.) Add basic eligibility questions to the Applicant Profile as well as optional questions to the Applicant Profile in USAJOBS that will allow applicants to self-identify (subject to subsequent verification by the appointing agency) as eligible for certain special hiring authorities. This is expected to streamline some hiring actions by allowing agencies to search for resumes of applicants who have volunteered information about their eligibility under special hiring authorities. Information volunteered by applicants about their potential eligibility under one or more special hiring authorities will be stored in USAJOBS and will only become visible to agencies that are considering filling a job using a special hiring authority. In that case, the hiring agency will be able to search USAJOBS for potential applicants who have chosen to indicate that they believe they are eligible to be selected under the special authority the agency seeks to use.

Applicants who do not choose to use this opportunity to volunteer information about their eligibility under a special hiring authority may still choose to apply for jobs, as they are announced, under any of these special hiring authorities for which they are eligible. If applicants volunteer to provide information through the Web site about the special hiring authorities for which they believe they are eligible, then agencies that are searching for potential applicants to hire under one of these authorities may be able to locate their resume through USAJOBS and invite them to apply. Otherwise, this information will be retained in the USAJOBS database and not disclosed.

We estimate it will take approximately 38 minutes to initially complete the Resume Builder, depending on the amount of information the applicant wishes to include, and approximately five minutes to initially complete the Applicant Profile. We estimate over 3,500,000 new USAJOBS accounts will be submitted annually. The total annual estimated burden is 2,508,333 hours.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2011–18600 Filed 7–21–11; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: Presidential Management Fellows (PMF); Nomination Form, OPM 1300

AGENCY: U.S. Office of Personnel Management.

ACTION: 30-Day Notice and request for comments.

SUMMARY: The Office of Personnel Management (OPM) offers the general public and other Federal agencies the opportunity to comment on an extension of an already existing information collection request (ICR) 3206–0082, OPM Form 1300—Presidential Management Fellows (PMF) Nomination Form. As required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35), as amended by the Clinger-Cohen Act (Pub. L. 104–106), OPM is soliciting comments for this collection on behalf of the Office of Management and Budget. The information collection was previously published in the **Federal Register** on April 18, 2011, at Volume 76 FR 21783 allowing for a 60-day public comment period. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments. The Office of Management and Budget is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

DATES: Comments are encouraged and will be accepted until August 22, 2011. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The OPM Form 1300—Presidential Management Fellows (PMF) Nomination Form, is used by accredited colleges and universities to nominate eligible graduate students to the Presidential Management Fellows (PMF) Program. Information about the PMF Program (*e.g.,* eligibility, application and nomination process, guidance for academia, and a sample copy of the OPM Form 1300) can be found at *http://www.pmf.gov.*

Analysis

Agency: Employee Services, U.S. Office of Personnel Management.

Title: OPM Form 1300—Presidential Management Fellows (PMF) Nomination Form.

OMB Number: 3206–0082.

Affected Public: Academic institutions, graduate students, and individuals.

Number of Respondents: 9,000.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 1,500 hours.

John Berry,

Director, U.S. Office of Personnel Management.

[FR Doc. 2011–18560 Filed 7–21–11; 8:45 am]

BILLING CODE 6325–39–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–20; Order No. 760]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the La Mesa Annex, CA Station has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* July 28, 2011; *deadline for notices to intervene:* August 9, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to 39 U.S.C. 404(d), on July 13, 2011, the Commission received a petition for review of the closing of the La Mesa Annex, CA Station in San Diego, California. The petition, which was filed by Tom Wood, President of the San Diego California Area Local American Postal Workers Union, AFL–ClO (Petitioner), is postmarked July 8, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–20 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than August 17, 2011.

Categories of issues apparently raised. Petitioner contends that the Postal Service failed to adequately consider the economic savings resulting from the closure. *See* 39 U.S.C. 404(d)(2)(A)(iv).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the one set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is July 28, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is July 28, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 9, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than July 28, 2011.

2. Any responsive pleading by the Postal Service to this Notice is due no later than July 28, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Richard A. Oliver is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

PROCEDURAL SCHEDULE

July 13, 2011	Filing of Appeal.
July 28, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
July 28, 2011	Deadline for the Postal Service to file any responsive pleading.
August 9, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 17, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 6, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 21, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).

PROCEDURAL SCHEDULE—Continued

September 28, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 7, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–18522 Filed 7–21–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2011–21; Order No. 761]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Ukiah, California Main Post Office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: *Administrative record due (from Postal Service):* July 29, 2011; *deadline for notices to intervene:* August 12, 2011. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx*. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on July 14, 2011, the Commission received a petition for review of the closing of the Ukiah Main Post Office, Ukiah, California. The petition, which was filed by the Save Ukiah Post Office Committee and Michael E. Sweeny (Petitioner). The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011–21 to consider the Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than, August 18, 2011.

Categories of issues apparently raised. Petitioner raises the following issues: Failure of the Postal Service to adequately consider the economic savings resulting from the closure; and failure of the Postal Service to follow procedures required by law regarding closures. *See* 39 U.S.C. 404(d)(5)(B).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than the two set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is July 29, 2011. 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service to this Notice is July 29, 2011.

Application for suspension of determination. In addition to its Petition, the Save the Ukiah Post Office Committee and Michael E. Sweeney filed an application for suspension of the Postal Service's determination (*see* 39 CFR 3001.114). Commission rules allow for the Postal Service to file an answer to such application within 10 days after the application is filed. The Postal Service shall file an answer to the application no later than July 25, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov*. Additional filings in this case and participants' submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at 202–789–6873 or via electronic mail at *prc-webmaster@prc.gov*.

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. 39 CFR 3001.9(a) and .10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at 202–789–6846.

All documents filed will be posted on the Commission's Web site. The Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Those persons, other than the Petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before August 12, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and .10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file an answer to the application for suspension of the Postal Service's determination no later than July 25, 2011.

2. The Postal Service shall file the applicable administrative record regarding this appeal no later than July 29, 2011.

3. Any responsive pleading by the Postal Service to this Notice is due no later than July 29, 2011.

4. The procedural schedule listed below is hereby adopted.

5. Pursuant to 39 U.S.C. 505, Tracy N. Ferguson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

6. The Secretary shall arrange for publication of this notice and order and procedural schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

July 14, 2011	Filing of Appeal.
July 25, 2011	Deadline for the Postal Service to file an answer responding to the application for suspension.
July 29, 2011	Deadline for the Postal Service to file the administrative record in this appeal.
August 12, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
August 18, 2011	Deadline for Petitioner's Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
September 7, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
September 22, 2011	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
September 29, 2011	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
November 10, 2011	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–18589 Filed 7–21–11; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–29726; 812–13910]

BAC Home Loans Servicing, LP, et al.; Notice of Application and Temporary Order

July 18, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

SUMMARY: *Summary of Application:* Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against BAC Home Loans Servicing, LP (''HLS'') on May 31, 2011 by the United States District Court for the Central District of California (the ''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants have requested a permanent order.

APPLICANTS: HLS, BofA Advisors, LLC (''BofA Advisors''), BofA Distributors, Inc. (''BofA Distributors''), Bank of America Capital Advisors LLC (''BACA''), KECALP Inc. (''KECALP''), Merrill Lynch Ventures, LLC (''Ventures'') and Merrill Lynch Global Private Equity Inc. (''MLGPE'') (collectively, other than HLS, the ''Fund Servicing Applicants,'' and, together with HLS, the ''Applicants'').[1]

DATES: *Filing Date:* The application was filed on May 27, 2011 and amended it on June 1, 2011.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on August 12, 2011, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, HLS, 6400 Legacy Drive, Plano, TX 75024; BofA Advisors, BofA Distributors and BACA, 100 Federal Street, Boston, MA 02110; and KECALP, Ventures and MLGPE, 767 Fifth Avenue, 7th Floor, New York, NY 10153.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Daniele Marchesani, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. Each of the Applicants is a direct or indirect wholly-owned subsidiary of Bank of America Corporation (''BAC''). HLS is an entity that services mortgage loans and provides mortgage services, including conducting foreclosures on mortgages, on behalf of holders of residential mortgages and mortgage loan asset-backed certificates. HLS is not registered as a broker-dealer under the Securities Exchange Act of 1934 or as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'').

2. BofA Advisors is a registered investment adviser that serves as investment adviser and subadviser to certain money market funds registered under the Act. BofA Distributors, a limited purpose broker-dealer registered with the Commission, serves as principal underwriter of some of the same money market funds. BACA is a registered investment adviser that serves as investment adviser to certain closed-end investment companies also registered under the Act.

3. KECALP, Ventures and MLGPE each serves as investment adviser to certain employees' securities corporations within the meaning of section 2(a)(13) of the Act (''ESCs''). Of these three ESC advisers, only KECALP is registered as an investment adviser under the Advisers Act.

4. On May 31, 2011, the United States District Court for the Central District of

[1] Applicants request that any relief granted pursuant to the application also apply to any other company of which HLS is an affiliated person or may become an affiliated person in the future (together with the Applicants, the ''Covered Persons'').

California entered the Injunction against HLS, formerly Countrywide Home Loans Servicing LP, in a matter brought by The United States Department of Justice (''DOJ''). The complaint filed by DOJ (''Complaint'') alleged that, between 2006 and 2009, HLS wrongfully foreclosed without court orders on approximately 160 properties owned by servicemembers protected by the Servicemembers Civil Relief Act (''SCRA''). Additionally, the Complaint alleged that HLS, from 2006 through May 31, 2009, failed to consistently determine the military status of mortgage loan borrowers in foreclosure. Denying any wrongdoing as alleged by the United States or otherwise, HLS consented to the entry of the Injunction against violating the SCRA.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from acting as a bank, or from engaging in or continuing any conduct or practice in connection with such activity, from acting, among other things, as an investment adviser or depositor of any registered investment company, or a principal underwriter for any registered open-end investment company, registered unit investment trust (''UIT'') or registered face-amount certificate company. Section 9(a)(3) of the Act extends the prohibitions of section 9(a)(2) to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include, among others, any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that HLS is, or may be considered to be, under common control with and therefore an affiliated person of each of the other Applicants. Applicants state that the entry of the Injunction may result in Applicants being subject to the disqualification provisions of section 9(a) of the Act because HLS is permanently enjoined from engaging in or continuing particular conduct or practice in connection with banking activity.[2]

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that the Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the exemption. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting the Applicants and the other Covered Persons from the disqualification provisions of section 9(a) of the Act. On June 1, 2011 the Applicants received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Injunction until the Commission takes final action on an application for a permanent order or, if earlier, July 29, 2011.[3]

3. Applicants believe they meet the standard for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that the conduct giving rise to the Injunction did not involve any of the Applicants acting in the capacity as investment adviser, sub-adviser, or principal underwriter (as defined in section 2(a)(29) of the Act) for any registered investment companies (''RIC'') or ESCs (together, the ''Funds''). Applicants state that to the best of their knowledge none of the Applicants' current directors, officers or employees who is involved in providing services as investment adviser, subadviser or depositor for any Funds or principal underwriter (as defined in section 2(a)(29) of the Act) for any registered open-end company, UIT or registered face amount certificate company (collectively, the ''Fund Servicing Activities'') (or any other persons in such roles during the time period covered by the Complaint) participated in the conduct alleged in the Complaint that constitutes the violations that provide a basis for the Injunction. Applicants also state that the alleged conduct giving rise to the Injunction did not involve any Fund for which an Applicant provided Fund Servicing Activities.

5. Applicants further represent that the inability of Applicants (except for HLS) to continue providing Fund Servicing Activities would result in potentially severe financial hardships for both the Funds and their shareholders. Applicants state that they will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors (the ''Boards'') of each Fund (excluding the ESCs), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Fund, and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Funds with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the Federal securities laws.

6. Applicants also assert that, if the Applicants were barred from engaging in Fund Servicing Activities, the effect on their businesses and employees would be severe. The Applicants state that they have committed substantial resources to establishing expertise in providing Fund Servicing Activities.

7. Applicants also state that disqualifying KECALP, Ventures and MLGPE from continuing to provide investment advisory services to their ESCs is not in the public interest or in furtherance of the protection of investors and would frustrate the expectations of eligible employees who invest in the ESCs that the ESCs would be managed by an affiliate of their employer.

8. Applicants state that several Applicants and certain of their affiliates have previously received orders under section 9(c), as described in greater detail in the application.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

> Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application, or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have

[2] *See In the Matter of Bank of America, N.A.,* The Office of the Comptroller of the Currency Stipulation & Consent Order No. AA–EC–11–12 (Apr. 13, 2011) and *In the Matter of Bank of America Corporation,* The Board of Governors of the Federal Reserve Consent Order, No. 11–029–B–HC (Apr. 13, 2011). Applicants state that the OCC Order deemed certain loan servicing activity as banking activity, and the loan servicing activity specified in the Injunction is a subset of the loan servicing activity deemed banking activity by the OCC Order. Therefore, Applicants believe that HLS is permanently enjoined from engaging in or continuing particular conduct or practice in connection with banking activity.

[3] Investment Company Act Release No. 29688 (June 1, 2011).

made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that the Applicants and the other Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on their application for a permanent order.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18505 Filed 7–21–11; 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 will hold an Open Meeting on July 26, 2010 at 11 a.m., in the Auditorium, Room L–002.

The subject matter of the Open Meeting will be:

Item 1: The Commission will consider whether to adopt Rule 13h–1 and Form 13H under Section 13(h) of the Securities Exchange Act, to establish a large trader reporting system to identify market participants that conduct a substantial amount of trading activity and collect information on their trading.

Item 2: The Commission will consider whether to adopt amendments to rules and forms under the Securities Act of 1933 and Schedule 14A under the Securities Exchange Act of 1934, to replace references to credit ratings with alternative criteria. These amendments are in light of Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Item 3: The Commission will consider whether to re-propose rules related to shelf-eligibility for asset-backed securities and request additional comment on an outstanding proposal to require asset-level information about pool assets.

Item 4: The Commission will consider whether to adopt rule and form amendments under the Securities Exchange Act of 1934 and the Investment Company Act of 1940 to require an institutional investment manager that is subject to Section 13(f) of the Securities Exchange Act to report annually how it voted proxies relating to executive compensation matters as required by Section 14A of the Securities Exchange Act, which was added by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: July 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18681 Filed 7–20–11; 4:15 pm]

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 will hold an Open Meeting on July 26, 2011 at 10 a.m., in the Auditorium, Room L–002, to hear oral argument in an appeal by International Power Group, Ltd. (IPWG) from action by the Depository Trust Company (DTC).

DTC operates an automated, centralized system for book-entry movement of securities positions in the accounts of its Participants, broker-dealers and other firms, with respect to trades of Eligible Securities. DTC provides two levels of services to its Participants for Eligible Securies: (1) A full range of depository services including book-entry delivery and settlement, and (2) custodial service. IPWG is a Delaware corporation, the common stock of which was accepted by the DTC as an Eligible Security for all purposes.

On September 30, 2009, DTC issued an ''Important Notice'' that stated, ''As a result of [certain civil litigation], DTC has suspended all services, except Custody Services, for [the common stock of IPWG].''

IPWG challenges DTC's issuance of the Important Notice. Issues likely to be considered at oral argument include whether the Commission has jurisdiction to hear IPWG's challenge pursuant to Securities Exchange Act Section 19(f), and the extent to which DTC is required to provide fair procedures to issuers such as IPWG pursuant to Securities Exchange Act 17A(b)(3)(H).

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information, please contact the Office of the Secretary at (202) 551–5400.

Dated: July 19, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18680 Filed 7–20–11; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64909; File No. SR–NSX–2011–07]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NSX Rule 11.15 Consistent With the Implementation of the Adoption of Rule 15c3–5 Under the Act

July 18, 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 July 14, 2011, National Stock Exchange, Inc. filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX®'' or ''Exchange'') is proposing to amend NSX Rule 11.15 to make certain changes consistent with the implementation of the adoption of Rule 15c3–5 under the Act (the ''Market Access Rule'').

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nsx.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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[3] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and certain other risks associated with providing its customers with market access. In anticipation of the July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend Rule 11.15 to recognize that routable orders will be handled consistent with the Market Access Rule.

Consistent with the Market Access Rule, NSX Securities LLC (''NSX Securities''), as the Exchange's affiliated routing broker-dealer, has implemented certain tests that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all applicable regulatory requirements in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that are deemed non-compliant with applicable Market Access Rule requirements. NSX Securities retains sole discretion to determine whether to reject, prior to routing, and/or cancel after routing, an order or series of orders based on a violation of applicable pre-trade requirements.

Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[5] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change recognizes compliance by the Exchange's affiliated broker-dealer, NSX Securities, with the Market Access Rule. The Exchange also believes that the proposed changes will benefit ETP Holders because it provides clarity regarding compliance with the Market Access Rule.

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 Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6)(iii) thereunder.[7]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[8] However, Rule 19b–4(f)(6)(iii)[9] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow NSX Securities to comply with Rule 15c3–5 under the Act by July 14, 2011;[10] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–NSX–2011–07 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–NSX–2011–07. This file number should be included in the subject line if e-mail is used. To help the Commission process and review 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.,

[3] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6)(iii).

[8] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[9] *Id.*

[10] 17 CFR 240.15c3–5.

[11] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. eastern time. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2011–07 and should be submitted by August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18502 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64906; File No. SR–NYSEArca–2011–49]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Equities Rule 7.45 to Make Changes Necessary to Allow Its Routing Broker to Operate Consistent With the Requirements of Rule 15c3–5 Under the Securities Exchange Act of 1934

July 18, 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 July 13, 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 and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.45 to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Act'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

The Exchange proposes to amend NYSE Arca Equities Rule 7.45 to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3–5.[5] Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5. The Exchange is proposing substantially similar rule changes for its options market, and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex''), also are proposing substantially similar rule changes.[6]

Archipelago Securities LLC (''Arca Securities'') currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by NYSE Arca Equities Rule 7.45. NYSE Arca Equities Rule 7.45(b)(1) currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

On November 3, 2010, the Commission adopted SEC Rule 15c3–5,[7] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3–5, the Exchange is proposing to amend NYSE Arca Equities Rule 7.45 to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3–5.[8]

Specifically, the Exchange proposes to adopt NYSE Arca Equities Rule 7.45(b)(1)(B) to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Brokers(s) providing ''market access,'' as that term is defined in SEC Rule 15c3–5(a)(1).[9] The Routing Broker's policies and procedures for compliance with SEC Rule 15c3–5 will address two circumstances: (1) When the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act[10] for ''NMS stocks'' (as that term is defined in Rule 600 of Regulation NMS),[11] or in compliance with a national market system plan for listed options (''exempt orders''); and (2) when the Routing Broker routes orders on behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting ''protected quotations'' (as that term is defined in

[12] 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] 17 CFR 240.15c3–5.

[5] NYSE Arca Equities Rule 7.45(a) defines ''Routing Broker'' as ''the broker-dealer affiliate of NYSE Arca, LLC and/or any other non-affiliate third-party broker-dealer that acts as a facility of NYSE Arca, LLC for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by the Rules of the Corporation and federal securities laws. The Routing Brokers will operate as described in this Rule 7.45.''

[6] *See* SR–NYSEArca–2011–50 (options), SR–NYSE–2011–34, SR–NYSEAmex–2011–52 (equities), and SR–NYSEAmex–2011–53 (options).

[7] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[8] The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3–5(c)(1)(i) for all securities. *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

[9] The existing text of NYSE Arca Equities Rule 7.45(b)(1) would be renumbered as NYSE Arca Equities Rule 7.45(b)(1)(A).

[10] 17 CFR 242.611.

[11] 17 CFR 242.600(47).

Rule 600 of Regulation NMS) [12] (''non-exempt orders'').

With respect to exempt orders, SEC Rule 15c3–5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3–5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3–5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3–5. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.[13] In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3–5. The Exchange also believes that the proposed changes will benefit ETP Holders of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3–5.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3–5 under the Act by July 14, 2011; [21] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–49 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–2011–49. 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

[12] 17 CFR 242.600(58).

[13] *See* 17 CFR 240.15c3–5(c)(1)(i).

[14] *See* 17 CFR 240.15c3–5(c)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2011–49 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18499 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64902; File No. SR–NYSEAmex–2011–49]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Proposal To Amend the Fee Schedule by Adding Definitions for the Strategy Executions That Qualify for Transaction Fee Caps

July 18, 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 July 5, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fee Schedule by adding definitions for the Strategy Executions that qualify for transaction fee caps. The text of the proposed rule change is available at the Exchange, at *http://www.nyse.com,* at the Commission's Public Reference Room, and at 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

NYSE Amex proposes to amend its Fee Schedule by adding definitions for the Strategy Executions that qualify for transaction fee caps. The Exchange does not propose to change any fees in the Fee Schedule.

In 2004, the Exchange amended its Fee Schedule to cap transaction fees for Strategy Executions involving reversals and conversions, dividend spreads, and box spreads.[3] The Exchange subsequently expanded the Strategy Executions eligible for the transaction fee cap to include short stock interest spreads, merger spreads and jelly rolls.[4] In its previous rule filings, the Exchange described the requirements that Strategy Executions must meet to qualify for the transaction fee cap; however these Strategy Executions were not defined in the Fee Schedule. The Exchange is now proposing to define the Strategy Executions in order to provide additional clarity and transparency in the Fee Schedule.[5]

The Exchange proposes to define each of the six Strategy Executions that qualify for the cap in new endnote 9:[6]

- A ''reversal'' is established by combining a short security position with a short put and a long call position that shares the same strike and expiration. A ''conversion'' is established by combining a long position in the underlying security with a long put and a short call position that shares the same strike and expiration.
- A ''dividend spread'' is defined as transactions done to achieve a dividend arbitrage involving the purchase, sale and exercise of in-the-money options of the same class, executed prior to the date on which the underlying stock goes ex-dividend.
- A ''box spread'' is defined as transactions involving a long call option and a short put option at one strike, combined with a short call option and long put at a different strike, to create synthetic long and synthetic short stock positions, respectively.
- A ''short stock interest spread'' is defined as transactions done to achieve a short stock interest arbitrage involving the purchase, sale and exercise of in-the-money options of the same class.
- A ''merger spread'' is defined as transactions done to achieve a merger arbitrage involving the purchase, sale and exercise of options of the same class and expiration date, each executed prior to the date on which shareholders of record are required to elect their respective form of consideration, *i.e.,* cash or stock.
- A ''jelly roll'' is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but with a different expiration from the first position.

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)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 49358 (March 3, 2004), 69 FR 11469 (March 10, 2004) (SR–Amex–2004–09) (the ''2004 Release'').

[4] *See* Exchange Act Release No. 52297 (August 18, 2005), 70 FR 49687 (August 24, 2005) (SR–Amex–2005–080) (the ''2005 Release'') and Exchange Act Release No. 60077 (June 9, 2009), 74 FR 28737 (June 17, 2009) (SR–NYSEAmex–2009–22) (the ''2009 Release'').

[5] The Commission notes that the definitions proposed by the Exchange in the instant filing slightly differ from the definitions set forth in the 2003 Release, the 2005 Release, and the 2009 Release.

[6] The Chicago Board Options Exchange, Incorporated (''CBOE'') already has these strategies, with the exception of the box spread, defined in its fee schedule. *See* (*http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf*).

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

[8] 15 U.S.C. 78f(b)(5).

general, to protect investors and the public interest. In this respect, the Exchange is not proposing any changes to the fees within its Fee Schedule, but rather adding definitions for the Strategy Executions that qualify for the transaction fee caps. This change will better inform investors and the public of the necessary requirements for a Strategy Execution to qualify for the fee caps.

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)(i) [9] of the Act and Rule 19b–4(f)(1) [10] thereunder, as constituting a stated interpretation of the meaning, administration and enforcement of an existing rule of the Exchange. The proposed rule change provides definitions for existing terms in the Fee Schedule, and the definitions are consistent with the manner in which the Exchange interpreted those terms. 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–NYSEAmex–2011–49 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–NYSEAmex–2011–49. 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–NYSEAmex–2011–49 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18493 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(i).

[10] 17 CFR 240.19b–4(f)(1).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64903; File No. SR–EDGA–2011–20]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Amendment to EDGA Rule 11.9

July 18, 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 July 13, 2011, EDGA Exchange, Inc. (the ''Exchange'' or ''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 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 Rule 11.9 to make certain changes consistent with the upcoming implementation of the adoption of Rule 15c3–5 under the Act (the ''Market Access Rule'').[3] The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On November 3, 2010, the Commission adopted the Market Access

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 15c3–5.

Rule,[4] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend EDGA Rule 11.9 to describe the manner in which the Exchange's affiliated routing broker-dealer, Direct Edge ECN, LLC d/b/a DE Route (''DE Route'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, DE Route proposes to implement, as part of the procedures of DE Route, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that DE Route deems to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent DE Route determines, based on its procedures, that an order should be rejected, DE Route may also seek to cancel orders that have already been routed away.

Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, DE Route, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by DE Route consistent with the Market Access Rule.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii)[10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow DE Route to comply with Rule 15c3–5 under the Act by July 14, 2011;[11] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov.* Please include File No. SR–EDGA–2011–20 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGA–2011–20. 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. 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

[4] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *Id.*

[11] 17 CFR 240.15c3–5.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–2011–20 and should be submitted by August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18495 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64901; File No. SR–BYX–2011–015]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Make Certain Changes Consistent With the Upcoming Implementation of the Market Access Rule

July 18, 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 July 12, 2011, BATS Y–Exchange, Inc. (''BYX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BYX Rule 11.13 to make certain changes consistent with the upcoming implementation of the adoption of Rule 15c3–5 under the Act (the ''Market Access Rule'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[6] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend BYX Rule 11.13 to describe the manner in which the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (''BATS Trading'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, BATS Trading proposes to implement, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that BATS Trading deems to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent BATS Trading determines, based on its procedures, that an order should be rejected, BATS Trading may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, BATS Trading, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by BATS Trading consistent with the Market Access Rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date

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[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 17 CFR 240.15c3–5.

[6] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow BATS Trading to comply with Rule 15c3–5 under the Act by July 14, 2011;[13] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–BYX–2011–015 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BYX–2011–015. 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 changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 am and 3 pm. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BYX–2011–015 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18497 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] 17 CFR 240.15c3–5.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64908; File No. SR–NYSEAmex–2011–52]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Rule 17—NYSE Amex Equities to Make Changes Necessary to Allow Its Routing Broker to Operate Consistent With the Requirements of Rule 15c3–5 Under the Securities Exchange Act of 1934

July 18, 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 July 13, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 17—NYSE Amex Equities to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Act'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

The Exchange proposes to amend Rule 17—NYSE Amex Equities to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3–5.[5] Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.15c3–5.

[5] Rule 13—NYSE Amex Equities defines ''Routing Broker'' as ''the broker-dealer affiliate of the Exchange and/or any other non-affiliate third-party broker-dealer that acts as a facility of the Exchange for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by Exchange Rules and Federal securities laws. The Routing Broker(s) will operate as described in Exchange Rule 17—NYSE Amex Equities.''

controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5. The Exchange is proposing substantially similar rule changes for its options market, and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), also are proposing substantially similar rule changes.[6]

Archipelago Securities LLC (''Arca Securities'') currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by Rules 13 and 17—NYSE Amex Equities. Rule 17(c)(1)(A)—NYSE Amex Equities currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

On November 3, 2010, the Commission adopted SEC Rule 15c3–5,[7] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3–5, the Exchange is proposing to amend Rule 17—NYSE Amex Equities to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3–5.[8]

Specifically, the Exchange proposes to adopt Rule 17(c)(1)(A)(ii)—NYSE Amex Equities to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Brokers(s) providing ''market access,'' as that term is defined in SEC Rule 15c3–5(a)(1).[9] The Routing Broker's policies and procedures for compliance with SEC Rule 15c3–5 will address two circumstances: (1) When the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act[10] for ''NMS stocks'' (as that term is defined in Rule 600 of Regulation NMS),[11] or in compliance with a national market system plan for listed options (''exempt orders''); and (2) when the Routing Broker routes orders on behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting ''protected quotations'' (as that term is defined in Rule 600 of Regulation NMS)[12] (''non-exempt orders'').

With respect to exempt orders, SEC Rule 15c3–5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3–5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative. Currently, the only orders that the Routing Broker routes on behalf of the Exchange are exempt orders.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3–5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3–5, as may be necessary in the future. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.[13] In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3–5. The Exchange also believes that the proposed changes will benefit member organizations of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3–5.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

[6] *See* SR–NYSEAmex–2011–53 (options), SR–NYSE–2011–34, SR–NYSEArca–2011–49 (equities), and SR–NYSEArca–2011–50 (options).

[7] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[8] The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3–5(c)(1)(i) for all securities. *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

[9] The existing text of Rule 17(c)(1)(A)—NYSE Amex Equities would be renumbered as Rule 17(c)(1)(A)(i)—NYSE Amex Equities.

[10] 17 CFR 242.611.

[11] 17 CFR 242.600(47).

[12] 17 CFR 242.600(58).

[13] *See* 17 CFR 240.15c3–5(c)(1)(i).

[14] *See* 17 CFR 240.15c3–5(c)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3–5 under the Act by July 14, 2011; [21] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–52 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–NYSEAmex–2011–52. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSEAmex–2011–52 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18500 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64910; File No. SR–BATS–2011–021]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Certain Changes Consistent With the Upcoming Implementation of the Market Access Rule

July 18, 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 July 12, 2011, BATS Exchange, Inc. (''BATS'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6)(iii) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BATS Rules 11.13 and 21.9 to make certain changes consistent with the upcoming implementation of the adoption of Rule 15c3–5 under the Act (the ''Market Access Rule'').[5]

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] 17 CFR 240.15c3–5.

Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[6] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend BATS Rules 11.13 and 21.9 to describe the manner in which the Exchange's affiliated routing broker-dealer, BATS Trading, Inc. (''BATS Trading'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, BATS Trading proposes to implement, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that BATS Trading deems to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent BATS Trading determines, based on its procedures, that an order should be rejected, BATS Trading may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[7] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[8] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, BATS Trading, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by BATS Trading consistent with the Market Access Rule.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[11] However, Rule 19b–4(f)(6)(iii)[12] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow BATS Trading to comply with Rule 15c3–5 under the Act by July 14, 2011;[13] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–BATS–2011–021 on the subject line.

Paper Comments

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

All submissions should refer to File No. SR–BATS–2011–021. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be

[6] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] *Id.*

[13] 17 CFR 240.15c3–5.

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–BATS–2011–021 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18503 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64907; File No. SR–NYSEAmex–2011–53]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Options Rule 993NY To Make Changes Necessary To Allow Its Routing Broker To Operate Consistent With the Requirements of Rule 15c3–5 Under the Securities Exchange Act of 1934

July 18, 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 July 13, 2011, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Options Rule 993NY to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Act'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

The Exchange proposes to amend NYSE Amex Options Rule 993NY to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3–5.[5] Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5. The Exchange is proposing substantially similar rule changes for its equities market, and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE Arca, Inc. (''NYSE Arca''), also are proposing substantially similar rule changes.[6]

Archipelago Securities LLC (''Arca Securities'') currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by NYSE Amex Options Rule 993NY. NYSE Amex Options Rule 993NY(a)(1) currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

On November 3, 2010, the Commission adopted SEC Rule 15c3–5,[7] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3–5, the Exchange is proposing to amend NYSE Amex Options Rule 993NY to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3–5.[8]

Specifically, the Exchange proposes to adopt NYSE Amex Options Rule 993NY(a)(1)(B) to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Brokers(s) providing ''market access,'' as that term is defined in SEC Rule 15c3–5(a)(1).[9] The Routing Broker's policies and procedures for compliance with SEC Rule 15c3–5 will address two circumstances: (1) When the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act[10] for ''NMS stocks'' (as that term is defined in Rule 600 of Regulation NMS),[11] or in compliance with a national market system plan for listed options (''exempt orders''); and (2) when the Routing Broker routes orders on behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting ''protected

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 17 CFR 240.15c3–5.

[5] NYSE Amex Options Rule 900.2NY(69) defines ''Routing Broker'' as ''the broker-dealer affiliate of NYSE Amex, LLC and/or any other non-affiliate third-party broker-dealer that acts as a facility of the Exchange for routing orders entered into the NYSE Amex System of ATP Holders and Sponsored Participants to other Market Centers for execution whenever such routing is required by NYSE Amex Rules.''

[6] *See* SR–NYSEAmex–2011–52, SR–NYSE–2011–34, SR–NYSEArca–2011–49 (equities), and SR–NYSEArca–2011–50 (options).

[7] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[8] The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3–5(c)(1)(i) for all securities. *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

[9] The existing text of NYSE Amex Options Rule 993NY(a)(1) would be renumbered as NYSE Amex Options Rule 993NY(a)(1)(A).

[10] 17 CFR 242.611.

[11] 17 CFR 242.600(47).

quotations'' (as that term is defined in Rule 600 of Regulation NMS) [12] (''non-exempt orders'').

With respect to exempt orders, SEC Rule 15c3–5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3–5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative. Currently, the only orders that the Routing Broker routes on behalf of the Exchange are exempt orders.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3–5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3–5, as may be necessary in the future. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.[13] In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3–5. The Exchange also believes that the proposed changes will benefit member organizations of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3–5.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3–5 under the Act by July 14, 2011; [21] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEAmex–2011–53 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–NYSEAmex–2011–53. 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

[12] 17 CFR 242.600(58).

[13] *See* 17 CFR 240.15c3–5(c)(1)(i).

[14] *See* 17 CFR 240.15c3–5(c)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE Amex's principal office and on its Internet Web site at *http://www.nyse.com.* 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–NYSEAmex–2011–53 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18501 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64905; File No. SR–NYSEArca–2011–50]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Arca Options Rule 6.96 To Make Changes Necessary To Allow Its Routing Broker To Operate Consistent With the Requirements of Rule 15c3–5 Under the Securities Exchange Act of 1934

July 18, 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 July 13, 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 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Options Rule 6.96 to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Act'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

The Exchange proposes to amend NYSE Arca Options Rule 6.96 to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3–5.[5] Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5. The Exchange is proposing substantially similar rule changes for its equities market, and the Exchange's affiliates, New York Stock Exchange LLC (''NYSE'') and NYSE Amex LLC (''NYSE Amex''), also are proposing substantially similar rule changes.[6]

Archipelago Securities LLC (''Arca Securities'') currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by NYSE Arca Options Rule 6.96. NYSE Arca Options Rule 6.96(a)(1) currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

On November 3, 2010, the Commission adopted SEC Rule 15c3–5,[7] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3–5, the Exchange is proposing to amend NYSE Arca Options Rule 6.96 to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3–5.[8]

Specifically, the Exchange proposes to adopt NYSE Arca Options Rule 6.96(a)(1)(B) to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Broker(s) providing ''market access,'' as that term is defined in SEC Rule 15c3–5(a)(1).[9] The Routing Broker's policies and procedures for compliance with SEC Rule 15c3–5 will address two circumstances: (1) When the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act[10] for ''NMS stocks'' (as that term is defined in Rule 600 of Regulation NMS),[11] or in compliance with a national market system plan for listed options (''exempt orders''); and (2) when the Routing Broker routes orders on

[4] 17 CFR 240.15c3–5.

[5] NYSE Arca Options Rule 6.1A(a)(15) defines ''Routing Broker'' as ''the broker-dealer affiliate of NYSE Arca, Inc. and/or any other non-affiliate that acts as a facility of NYSE Arca, Inc. for routing orders entered into OX of OTP Holders, OTP Firms and OTP Firms' Sponsored Participants to other Market Centers for execution whenever such routing is required by NYSE Arca Rules.''

[6] *See* SR–NYSEArca–2011–49, SR–NYSE–2011–34, SR–NYSEAmex–2011–52 (equities), and SR–NYSEAmex–2011–53 (options).

[7] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[8] The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3–5(c)(1)(i) for all securities. *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

[9] The existing text of NYSE Arca Options Rule 6.96(a)(1) would be renumbered as NYSE Arca Options Rule 6.96(a)(1)(A).

[10] 17 CFR 242.611.

[11] 17 CFR 242.600(47).

behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting ''protected quotations'' (as that term is defined in Rule 600 of Regulation NMS) [12] (''non-exempt orders'').

With respect to exempt orders, SEC Rule 15c3–5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3–5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative. Currently, the only orders that the Routing Broker routes on behalf of the Exchange are exempt orders.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3–5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3–5, as may be necessary in the future. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.[13] In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3–5. The Exchange also believes that the proposed changes will benefit ETP Holders of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3–5.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3–5 under the Act by July 14, 2011; [21] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–50 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–2011–50. 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

[12] 17 CFR 242.600(58).

[13] *See* 17 CFR 240.15c3–5(c)(1)(i).

[14] *See* 17 CFR 240.15c3–5(c)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE Arca's principal office and on its Internet Web site at *http://www.nyse.com.* 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–2011–50 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18498 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64904; File No. SR–NYSE–2011–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 17 To Make Changes Necessary To Allow Its Routing Broker To Operate Consistent With the Requirements of Rule 15c3–5 Under the Securities Exchange Act of 1934

July 18, 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 July 13, 2011, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 17 to make changes necessary to allow its Routing Broker to operate consistent with the requirements of Rule 15c3–5 under the Securities Exchange Act of 1934 (''Act'').[4] The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, 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

The Exchange proposes to amend NYSE Rule 17 to permit its Routing Broker to operate consistent with the requirements of SEC Rule 15c3–5.[5] Specifically, the proposed rule change would allow the Routing Broker, in its sole discretion, to reject orders pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5. The Exchange's affiliates, NYSE Amex LLC (''NYSE Amex'') and NYSE Arca, Inc. (''NYSE Arca''), are proposing substantially similar rule changes.[6]

Archipelago Securities LLC (''Arca Securities'') currently is the primary outbound Routing Broker for the Exchange. The outbound routing function for the Exchange is governed by NYSE Rules 13 and 17. NYSE Rule 17(c)(1) currently provides that the Routing Broker cannot change the terms of an order or the routing instructions, nor can it exercise any discretion about where to route an order.

On November 3, 2010, the Commission adopted SEC Rule 15c3–5,[7] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing their customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for SEC Rule 15c3–5, the Exchange is proposing to amend NYSE Rule 17 to describe the manner in which the Routing Broker will handle routable orders consistent with SEC Rule 15c3–5.[8]

Specifically, the Exchange proposes to adopt NYSE Rule 17(c)(1)(A)(ii) to provide that, in the Routing Broker's sole discretion, pursuant to risk management controls and supervisory procedures maintained by the Routing Broker pursuant to SEC Rule 15c3–5, the Routing Broker may reject any order or series of orders as necessary to manage the financial, regulatory, and other risks of the Routing Brokers(s) providing ''market access,'' as that term is defined in SEC Rule 15c3–5(a)(1).[9] The Routing Broker's policies and procedures for compliance with SEC Rule 15c3–5 will address two circumstances: (1) When the Routing Broker routes orders on behalf of the Exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS under the Act[10] for ''NMS stocks'' (as that term is defined

[4] 17 CFR 240.15c3–5.

[5] NYSE Rule 13 defines ''Routing Broker'' as ''the broker-dealer affiliate of the Exchange and/or any other non-affiliate third-party broker-dealer that acts as a facility of the Exchange for routing orders entered into Exchange systems to other market centers for execution whenever such routing is required by Exchange Rules and federal securities laws. The Routing Brokers will operate as described in Exchange Rule 17.''

[6] *See* SR–NYSEAmex–2011–52 (equities), SR–NYSEAmex–2011–53 (options), SR–NYSEArca–2011–49 (equities), and SR–NYSEArca–2011–50 (options).

[7] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010) (File No. S7–03–10).

[8] The Commission extended the compliance date to November 30, 2011 for all of the requirements for fixed income securities and the requirements of SEC Rule 15c3–5(c)(1)(i) for all securities. *See* Securities Exchange Act Release No. 64748 (June 27, 2011), 76 FR 38293 (June 30, 2011) (File No. S7–03–10).

[9] The existing text of NYSE Rule 17(c)(1)(A) would be renumbered as NYSE Rule 17(c)(1)(A)(i).

[10] 17 CFR 242.611.

in Rule 600 of Regulation NMS),[11] or in compliance with a national market system plan for listed options (''exempt orders''); and (2) when the Routing Broker routes orders on behalf of the Exchange for any other purpose, including pursuant to the terms of an order type adopted by the Exchange or pursuant to a routing strategy through which the Routing Broker routes orders to market centers that are not posting ''protected quotations'' (as that term is defined in Rule 600 of Regulation NMS)[12] (''non-exempt orders'').

With respect to exempt orders, SEC Rule 15c3–5(b) provides that a broker-dealer that routes orders on behalf of an exchange for the purpose of accessing other trading centers with protected quotations in compliance with Rule 611 of Regulation NMS for NMS stocks, or in compliance with a national market system plan for listed options, is subject only to the requirements of paragraph (c)(1)(ii) of the Rule. SEC Rule 15c3–5(c)(1)(ii) provides that the risk management controls and supervisory procedures required by the Rule must include elements reasonably designed to prevent the entry of erroneous orders, by rejecting orders that exceed appropriate price or size parameters, on an order-by-order basis or over a short period of time, or that indicate duplicative orders. Accordingly, for exempt orders, the Routing Broker will reject any order or series of orders that it determines, in its sole discretion, to be erroneous or duplicative. Currently, the only orders that the Routing Broker routes on behalf of the Exchange are exempt orders.

With respect to non-exempt orders, all of the requirements of SEC Rule 15c3–5 would apply to orders that the Routing Broker routes on behalf of the Exchange, and the proposed rule change is intended to provide the Routing Broker with authority to reject such orders as necessary to comply with SEC Rule 15c3–5, as may be necessary in the future. In this regard, the risk management controls and supervisory procedures of the Routing Broker would include, as applicable, controls to prevent the entry of orders that exceed appropriate pre-set credit or capital thresholds in the aggregate for each customer and the broker-dealer and, where appropriate, more finely-tuned by sector, security, or otherwise by rejecting orders if such orders would exceed the applicable credit or capital thresholds.[13] In addition, the risk management controls and supervisory procedures of the Routing Broker would be reasonably designed to ensure compliance with applicable regulatory requirements.[14]

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's Routing Broker to comply with SEC Rule 15c3–5. The Exchange also believes that the proposed changes will benefit member organizations of the Exchange because it provides clarity on the procedures employed by the Routing Broker consistent with SEC Rule 15c3–5.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[19] However, Rule 19b–4(f)(6)(iii)[20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow Arca Securities to comply with Rule 15c3–5 under the Act by July 14, 2011;[21] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2011–34 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.

[11] 17 CFR 242.600(47).

[12] 17 CFR 242.600(58).

[13] *See* 17 CFR 240.15c3–5(c)(1)(i).

[14] *See* 17 CFR 240.15c3–5(c)(2).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[20] *Id.*

[21] 17 CFR 240.15c3–5.

[22] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

All submissions should refer to File Number SR–NYSE–2011–34. 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 Section, 100 F Street, NE., Washington, DC 20549–1090. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *http://www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2011–34 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18496 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64900; File No. SR–Phlx–2011–99]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend Phlx Options Rule 1080(m)

July 18, 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 July 13, 2011, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes a rule change to amend PHLX Options Rule 1080(m) to make certain changes consistent with the upcoming implementation of Rule 15c3–5 under the Act (the ''Market Access Rule'').[3]

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/,* 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 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 Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[4] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend PHLX Options Rule 1080(m) to describe the manner in which the Exchange's affiliated routing broker-dealer, NASDAQ Options Services (''NOS'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, NOS proposes to implement, as part of the procedures of NOS, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that NOS deem to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent NOS determine, based on its procedures, that an order should be rejected, NOS may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, NOS, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by NOS consistent with the Market Access Rule.

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.

[3] 17 CFR 240.15c3–5.

[4] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under Rule 19b–4(f)(6) [9] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[10] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will permit the Exchange's affiliated broker-dealers, NOS, to comply with Rule 15c3–5 under the Act by July 14, 2011; [11] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the 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–2011–99 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–2011–99. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2011–99 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18494 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Phlx has satisfied this requirement.

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] 17 CFR 240.15c3–5.

[12] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64899; File No. SR–NASDAQ–2011–097]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend NASDAQ Stock Market Equities Trading Rules 4757 and 4758 and NASDAQ Options Market Rules Chapter VI

July 18, 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 July 13, 2011, The NASDAQ Stock Market LLC (the ''Exchange'' or ''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 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 is filing this proposed rule change to amend NASDAQ Stock Market equities trading Rules 4757 and 4758 and NASDAQ Options Market Rules Chapter VI, Section 10 and 11.

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, 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 those statements may be examined at the places specified in Item IV below. The

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[3] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend NASDAQ Stock Market equities trading Rules 4757 and 4758 and NASDAQ Options Market Rules Chapter VI, Section 10 and 11 to describe the manner in which the Exchange's affiliated routing broker-dealers, NASDAQ Execution Services (''NES'') and NASDAQ Options Services (''NOS'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, NES and NOS propose to implement, as part of the procedures of NES and NOS, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that NES and NOS deem to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent NES and NOS determine, based on these procedures, that an order should be rejected, NES and NOS may also seek to cancel orders that have already been routed away.

2. Statutory Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[4] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[5] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, NES and NOS, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by NES and NOS consistent with the Market Access Rule.

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. Rather, the change will promote greater competition by allowing NASDAQ to adopt functionality already in use at competing national securities exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7]

A proposed rule change filed under Rule 19b–4(f)(6)[8] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[9] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will permit the Exchange's affiliated broker-dealers, NES and NOS, to comply with Rule 15c3–5 under the Act by July 14, 2011;[10] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2011–097 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–2011–097. 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

[3] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. NASDAQ has satisfied this requirement.

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii).

[10] 17 CFR 240.15c3–5.

[11] For purposes only of waiving the operative delay for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2011–097 and should be submitted on or before August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18492 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64911; File No. SR–EDGX–2011–20]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Amendment to EDGX Rule 11.9

July 18, 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 July 13, 2011, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 11.9 to make certain changes consistent with the upcoming implementation of the adoption of Rule 15c3–5 under the Act (the ''Market Access Rule'').[3] The text of the proposed rule change is available on the Exchange's Web site at *http://www.directedge.com,* at the Exchange's principal office, and at the Public Reference Room of the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

On November 3, 2010, the Commission adopted the Market Access Rule,[4] pursuant to which, among other things, broker-dealers providing market access are required to implement certain pre-order entry checks in order to manage the financial, regulatory, and other risks associated with providing its customers with market access. In anticipation of the upcoming July 14, 2011 compliance date for the Market Access Rule, the Exchange is proposing to amend EDGX Rule 11.9 to describe the manner in which the Exchange's affiliated routing broker-dealer, Direct Edge ECN, LLC d/b/a DE Route (''DE Route'') will handle routable orders consistent with the Market Access Rule.

In order to comply with the Market Access Rule, DE Route proposes to implement, as part of the procedures of DE Route, certain tests, on both an order-by-order basis and over a short period of time, that are designed to limit the financial exposure that could arise as a result of market access and to ensure compliance with all regulatory requirements that are applicable in connection with market access. Consistent with the requirements of the Market Access Rule, these tests are designed to reject orders that DE Route deems to be erroneous or duplicative, would cause the entering Member's credit exposure to exceed a preset credit threshold, or are non-compliant with applicable pre-trade regulatory requirements (as defined in the Market Access Rule). To the extent DE Route determines, based on its procedures, that an order should be rejected, DE Route may also seek to cancel orders that have already been routed away.

[3] 17 CFR 15c3–5.

[4] *See* Securities Exchange Act Release No. 63241 (November 3, 2010), 75 FR 69792 (November 15, 2010).

Basis

The Exchange believes that its proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[5] In particular, the proposed change is consistent with Section 6(b)(5) of the Act,[6] because it would promote just and equitable principles of trade, and, in general, protect investors and the public interest. The proposed rule is consistent with the requirements of the Act because the change is necessary for the Exchange's affiliated broker-dealer, DE Route, to comply with the Market Access Rule. The Exchange also believes that the proposed changes will benefit Members of the Exchange because it provides clarity on the procedures employed by DE Route consistent with the Market Access Rule.

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.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[9] However, Rule 19b–4(f)(6)(iii) [10] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange notes that waiving the 30-day operative delay will allow DE Route to comply with Rule 15c3–5 under the Act by July 14, 2011; [11] the compliance date for Rule 15c3–5. For this reason, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*); or
- Send an E-mail to *rule-comments@sec.gov*. Please include File No. SR–EDGX–2011–20 on the subject line.

Paper Comments

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

All submissions should refer to File Number SR–EDGX–2011–20. 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 Commissions 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. 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–2011–20 and should be submitted by August 12, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–18504 Filed 7–21–11; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6).

[9] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[10] *Id.*

[11] 17 CFR 240.15c3–5.

[12] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–64824; File No. SR–CBOE–2011–063]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated: Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to PULSe Fees

July 6, 2011.

Correction

In notice document 2011–17381, appearing on pages 40965–40967, the agency docket number was inadvertently omitted from the document heading. It should appear as seen above.

[FR Doc. C1–2011–17381 Filed 7–21–11; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

M (2003) PLC (f/k/a Marconi PLC), Mayfair Mining & Minerals, Inc.,MM2 Group, Inc., Nayna Networks, Inc., NCT Group, Inc., and Neptune Industries, Inc. (f/k/a Move Films, Inc.); Order of Suspension of Trading

July 20, 2011.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of M (2003) PLC (f/k/a Marconi PLC) because it has not filed any periodic reports since the period ended March 31, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Mayfair Mining & Minerals, Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of MM2 Group Inc. because it has not filed any periodic reports since the period ended March 31, 2009.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Nayna Networks, Inc. because it has not filed any periodic reports since the period ended September 30, 2007.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of NCT Group, Inc. because it has not filed any periodic

reports since the period ended June 30, 2006.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Neptune Industries, Inc. (f/k/a Move Films, Inc.) because it has not filed any periodic reports since the period ended September 30, 2008.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on July 20, 2011, through 11:59 p.m. EDT on August 2, 2011.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2011–18679 Filed 7–20–11; 4:15 pm]

BILLING CODE 8011–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: General Operating and Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on May 25, 2011, vol. 76, no. 101, page 30421–30422. Part A of Subtitle VII of the Revised Title 49 U.S.C. authorizes the issuance of regulations governing the use of navigable airspace. Information is collected to determine compliance with Federal regulations. Respondents are individual airmen, state or local governments, and businesses.

DATES: Written comments should be submitted by August 22, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0005.

Title: General Operating and Flight Rules.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The reporting and recordkeeping requirements of Federal Aviation Regulation (FAR) Part 91, General Operating and Flight Rules, are authorized by Part A of Subtitle VII of the Revised Title 49 United States Code. FAR Part 91 prescribes rules governing the operation of aircraft (other than moored balloons, kites, rockets and unmanned free balloons) within the United States. The reporting and recordkeeping requirements prescribed by various sections of FAR Part 91 are necessary for FAA to assure compliance with these provisions.

Respondents: Approximately 21,197 airmen, state or local governments, and businesses.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 34 minutes.

Estimated Total Annual Burden: 235,164 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on July 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–300.

[FR Doc. 2011–18468 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification of Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. Regulation generates a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors.

DATES: Written comments should be submitted by September 20, 2011.

FOR FURTHER INFORMATION CONTACT: Carla Scott on (202) 385–4293, or by e-mail at: *Carla.Scott@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0690.

Title: Certification of Airmen for the Operation of Light-Sport Aircraft.

Form Numbers: FAA Form 8710–11.

Type of Review: Renewal of an information collection.

Background: The Final Rule ''Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft'' [69 FR 44771] generated a need for new designated pilot examiners and designated airworthiness representatives to support the certification of new light-sport aircraft, pilots, flight instructors, and ground instructors.

Respondents: Approximately 57,214 respondents.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.27 hours.

Estimated Total Annual Burden: 72,582 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Scott, Room 336, Federal Aviation Administration, AES–300, 950 L'Enfant Plaza, SW., Washington, DC 20024.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of

information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on July 15, 2011.

Carla Scott,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. 2011–18467 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0067]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval for a new information collection, which is summarized below under **SUPPLEMENTARY INFORMATION**. We published a **Federal Register** Notice with a 60-day public comment period on this information collection on May 18, 2011. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by August 22, 2011.

ADDRESSES: You may send comments within 30 days to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention DOT Desk Officer. You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burden; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. All comments should include the Docket number FHWA–2011–0067.

FOR FURTHER INFORMATION CONTACT: Jeffrey Miller, (202) 366–0744 or *jeffrey.miller@dot.gov,* Office of Safety Integration, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Strategic Highway Safety Plan (SHSP).

Type of request: New information collection requirement.

Background: The Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users (SAFETEA–LU), 23 U.S.C. 148, established the Highway Safety Improvement Program (HSIP) as a core Federal program. A Strategic Highway Safety Plan (SHSP) is a major and mandatory component of the HSIP. A SHSP is a statewide-coordinated, data-driven, multi-year comprehensive safety plan coordinated by a State Department of Transportation. The purpose of the SHSP is to identify the State's key safety needs and guide investment decisions to achieve significant reductions in highway fatalities and serious injuries on all public roads. The SHSP is developed by each State in a cooperative process with local, State, Federal, and private sector engineering, education, enforcement, and emergency medical service stakeholders. The SHSP process allows highway safety programs in the State to work together in an effort to align and leverage resources. This coordination also allows State agencies to integrate multiple strategic safety plans, including the Highway Safety Plan (HSP) and the Commercial Vehicle Safety Plan (CVSP). FHWA supports development of SHSPs at the State level by (1) Providing technical assistance; (2) conducting education and outreach; (3) performing and disseminating research and analysis; (4) developing and distributing technical tools, and (5) drafting and disseminating policy and guidance. The requested information collection, in the form of an on-line survey tool, will be used to evaluate the efficiency and effectiveness of these activities in supporting the development and implementation of SHSPs. Survey respondents will be asked to provide information about their use and opinion of FHWA-supplied products and services to support SHSP development and implementation as well as their perspectives on the effectiveness of the SHSP program overall. Certain survey respondents will also be asked to provide feedback on State-level coordination between the SHSP, the HSP and the CVSP annual safety plans required by the National Highway Traffic Safety Administration (NHTSA) and the Federal Motor Carrier Safety Administration (FMCSA), respectively. The information will also allow FHWA to assess the needs of State DOTs for additional products and services in support of the SHSP development, update and implementation processes, with the ultimate goal of improving highway safety outcomes across the nation.

Respondents: We estimate that 153 State-level leads responsible for development and implementation of the SHSP, the HSP and the CVSP. In some cases, an individual may be responsible for more than one plan.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 30 minutes.

Estimated Total Annual Burden Hours: The total burden for this collection would be approximately 76.5 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: July 19, 2011.

Juli Huynh,

Chief, Management Programs and Analysis Division.

[FR Doc. 2011–18565 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0178]

Agency Information Collection Activities; Revision of a Currently-Approved Information Collection Request: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for information.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval. The FMCSA requests approval to revise an ICR entitled, ''Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers,''

that requires Mexico-domiciled for-hire and private motor carriers to file an application Form OP–2 if they wish to register to transport property only within municipalities in the United States on the U.S.-Mexico international borders or within the commercial zones of such municipalities. FMCSA invites public comment on the ICR.

DATES: We must receive your comments on or before *September 20, 2011.*

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0178 using any 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; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement for the 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/pdfE8-794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. 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: Ms. Vivian Oliver, Transportation Specialist, Office of Information Technology, IT Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, 6th Floor, West Building, 1200 New Jersey Ave., SE., Washington DC 20590. *Telephone Number:* (202) 366–2974; *E-mail Address: vivian.oliver@dot.gov.* Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background: Title 49 U.S.C. 13902(c) contains basic licensing procedures for registering foreign motor carriers to operate across the U.S.-Mexico border into the United States. Part 368 of title 49, CFR, contains the regulations that require Mexico-domiciled motor carriers to apply to the FMCSA for a Certificate of Registration to provide interstate transportation in municipalities in the United States on the U.S.-Mexico international border or within the commercial zones of such municipalities as defined in 49 U.S.C. 13902(c)(4)(A). The FMCSA carries out this registration program under authority delegated by the Secretary of Transportation.

Foreign (Mexico-based) motor carriers use Form OP–2 to apply for Certificate of Registration authority at the FMCSA. The form requests information on the foreign motor carrier's name, address, U.S. DOT Number, form of business (*e.g.,* corporation, sole proprietorship, partnership), locations where the applicant plans to operate, types of registration requested (*e.g.,* for-hire motor carrier, motor private carrier), insurance, safety certifications, household goods arbitration certifications, and compliance certifications.

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers.

OMB Control Number: 2126–0019.

Type of Request: Revision of a currently-approved information collection.

Respondents: Foreign motor carriers and commercial motor vehicle drivers.

Estimated Number of Respondents: 400.

Estimated Time per Response: 4 hours to complete Form OP–2.

Expiration Date: February 29, 2012.

Frequency of Response: Other (Once).

Estimated Total Annual Burden: 1,600 hours [400 responses × 4 hours to complete Form OP–2 = 1,600].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the agency to perform its mission; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: July 14, 2011.

Kelly Leone,

Associate Administrator for Office of Research and Information Technology.

[FR Doc. 2011–18585 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0102]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 16 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to operate commercial motor vehicles (CMVs) in interstate commerce without meeting the prescribed vision standard. The Agency has concluded that granting these exemptions will provide a level of safety that is equivalent to or greater than the level of safety maintained without the exemptions for these CMV drivers.

DATES: The exemptions are effective July 22, 2011. The exemptions expire on July 22, 2013.

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs, (202)–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–

224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m. Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Federal Document Management System (FDMS) at *http://www.regulations.gov.*

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act Statement for the FDMS 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.*

Background

On May 19, 2011, FMCSA published a notice of receipt of exemption applications from certain individuals, and requested comments from the public (76 FR 29022). That notice listed 16 applicants' case histories. The 16 individuals applied for exemptions from the vision requirement in 49 CFR 391.41(b)(10), for drivers who operate CMVs in interstate commerce.

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' The statute also allows the Agency to renew exemptions at the end of the 2-year period. Accordingly, FMCSA has evaluated the 16 applications on their merits and made a determination to grant exemptions to each of them.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

FMCSA recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely. The 16 exemption applicants listed in this notice are in this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinoblastoma, central scotoma, complete loss of vision, cataract, no light perception, exotropia and retinal scars. In most cases, their eye conditions were not recently developed. Twelve of the applicants were either born with their vision impairments or have had them since childhood. The 4 individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 29 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. Doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and skills tests designed to evaluate their qualifications to operate a CMV.

All of these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. While possessing a valid CDL or non-CDL, these 16 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 40 years. In the past 3 years, none of the drivers were involved in crashes or convicted of moving violations in a CMV.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the May 19, 2011 notice (76 FR 29022).

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency.

To qualify for an exemption from the vision standard, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at Docket Number FMCSA–1998–3637.

We believe we can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrate the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively (See 61 FR 13338, 13345, March 26, 1996). The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision

deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 16 applicants, none of the applicants were convicted for moving violations and none of the applicants were involved in a crash. All the applicants achieved a record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he/she has been performing in intrastate commerce. Consequently, FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the Agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31136(e) and 31315 to the 16 applicants listed in the notice of May 19, 2011 (76 FR 29022).

We recognize that the vision of an applicant may change and affect his/her ability to operate a CMV as safely as in the past. As a condition of the exemption, therefore, FMCSA will impose requirements on the 16 individuals consistent with the grandfathering provisions applied to drivers who participated in the Agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

FMCSA received no comments in this proceeding.

Conclusion

Based upon its evaluation of the 16 exemption applications, FMCSA exempts, Stanley C. Anders, Joel A. Cabrera, Sherman W. Clapper, Eric C. Esplin, Ronald R. Fournier, Ronald D. Jackman, II, Thomas W. Kent, Brian L. Keszler, Gerald Kortesmaki, Craig C. Lowry, Robert J. MacInnis, Gordon S. Newman, Adolph L. Romero, Rodney W. Sukalski, Larry D. Warneke and Lonnie D. Wendinger from the vision requirement in 49 CFR 391.41(b)(10), subject to the requirements cited above (49 CFR 391.64(b)).

In accordance with 49 U.S.C. 31136(e) and 31315, each exemption will be valid for 2 years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136 and 31315.

If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: July 15, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–18587 Filed 7–21–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2011.

The Department of the Treasury will submit the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. A copy of the submissions may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury PRA Clearance Officer, Department of the Treasury, 1750 Pennsylvania Avenue, NW., Suite 11010, Washington, DC 20220.

DATES: Written comments should be received on or before August 22, 2011 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0014.

Type of Review: Extension without change of a currently approved collection.

Title: Schedule of Excess Risks.

Form: FMS–285–A.

Abstract: Listing of Excess Risks written or assumed by Treasury Certified Companies for compliance with Treasury regulations to assist in determination of solvency of Certified

Companies for the benefit of writing Federal surety bonds.

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 5,600.

OMB Number: 1510–0047.

Type of Review: Extension without change of a currently approved collection.

Title: List of Data (A) and List of Data (B).

Abstract: This information is collected from insurance companies to provide Treasury a basis to determine acceptability of companies applying for a Certificate of Authority to write or reinsure Federal surety bonds or as an Admitted Reinsurer (not on excess risks to U.S.).

Affected Public: Private Sector: Businesses or other for-profits.

Estimated Total Burden Hours: 540.

OMB Number: 1510–0061.

Type of Review: Extension without change of a currently approved collection.

Title: CMIA Annual Report and Interest Calculation Cost Claims.

Abstract: Public Law 101–453 requires that States and Territories must report interest liabilities for major Federal assistance programs annually. States and Territories may report interest calculation cost claims for compensation of administrative costs.

Affected Public: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 22,036.

Bureau Clearance Officer: Wesley Powe, Financial Management Service, 3700 East West Highway, Room 144, Hyattsville, MD 20782; (202) 874–8936.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395–7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–18536 Filed 7–21–11; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0665]

Agency Information Collection (Direct Deposit Enrollment/Change) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0665'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0665.''

SUPPLEMENTARY INFORMATION:

Title: Direct Deposit Enrollment/Change, VA Form 29–0309.

OMB Control Number: 2900–0665.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–0309 authorizing VA to initiate or change direct deposit of insurance benefit at their financial institution.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 18, 2011, at pages 28852–28853.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,000 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18539 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0405]

Agency Information Collection (REPS Annual Eligibility Report) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0405'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0405.''

SUPPLEMENTARY INFORMATION:

Title: REPS Annual Eligibility Report, (Under the Provisions of Section 156, Pub. L. 97–377), VA Form 21–8941.

OMB Control Number: 2900–0405.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8941 is completed annually by claimants who have earned income that is at or near the limit of earned income. The REPS program pays benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. VA uses the information collected to determine a claimant's continued entitlement to Restored Entitlement Program for Survivors (RESPS) benefits.

An agency may not conduct or sponsor, and a person is not required to

respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at pages 27385–27386.

Affected Public: Individuals or households.

Estimated Annual Burden: 300 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,200.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18540 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Agency Information Collection (Notice of Waiver of VA Compensation or Pension To Receive Military Pay and Allowances) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0463'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0463.''

SUPPLEMENTARY INFORMATION:

Title: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances, VA Form 21–8951 and VA Form 21–8951–2.

OMB Control Number: 2900–0463.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who wish to waive VA disability benefits in order to receive active or inactive duty training pay are required to complete VA Forms 21–8951 and 21–8951–2. Active and inactive duty training pay cannot be paid concurrently with VA disability compensation or pension benefits. Claimants who elect to keep training pay must waive VA benefits for the number of days equal to the number of days in which they received training pay.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27381.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 21,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18541 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0052]

Agency Information Collection (Report of Medical Examination for Disability Evaluation) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0052'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0052.''

SUPPLEMENTARY INFORMATION:

Title: Report of Medical Examination for Disability Evaluation, VA Form 21–2545.

OMB Control Number: 2900–0052.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2545 is completed by claimants prior to undergoing a VA examination for disability benefits. The examining physician also completes the form to record the findings of such examination. An examination is required where the reasonable probability of a valid claim is indicated in any claims for disability compensation or pension, including claims for benefits based on the need of a veteran, surviving spouse, or parent for regular aid and attendance, and for benefits based on a child's' incapacity of self-support. VA uses the data to determine the level of disability.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at pages 27380–27381.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 180,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18542 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0075]

Agency Information Collection (Statement in Support of Claim) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0075'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0075.''

SUPPLEMENTARY INFORMATION:

Title: Statement in Support of Claim, VA Form 21–4138.

OMB Control Number: 2900–0075.

Type of Review: Extension of a currently approved collection.

Abstract: Statements submitted by or on behalf of a claimant must contain a certification by the respondent that the information provided to VA is true and correct in support of various types of benefit claims processed by VA. VA Form 21–4138 is to used collect the statement in support of such claims.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27383.

Affected Public: Individuals or households.

Estimated Annual Burden: 188,000 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 752,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18543 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0094]

Agency Information Collection (Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims)) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0094'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0094.''

SUPPLEMENTARY INFORMATION:

Title: Supplement to VA Forms 21–526, 21–534, and 21–535 (For Philippine Claims), VA Form 21–4169.

OMB Control Number: 2900–0094.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–4169 is used to collect certain applicants' service information, place of residence, proof of service, and whether the applicant was a member of pro-Japanese, pro-German, or anti-American Filipino organizations. VA uses the information collected to determine the applicant's eligibility for benefits based on Commonwealth Army of the Philippines or recognized guerrilla services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27379.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 1,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18544 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0079]

Agency Information Collection (Employment Questionnaire) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0079'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0079.''

SUPPLEMENTARY INFORMATION:

Title: Employment Questionnaire, VA Forms 21–4140 and 21–4140–1.

OMB Control Number: 2900–0079.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who are under the age of 60 and receiving individual unemployability compensation at 100 percent rate are required to complete VA Forms 21–4140 and 21–4140–1 certifying that they are still unable to secure or follow a substantially gainful occupation because of a service connected-disability. VA will use the information collected to determine the claimant's continued entitlement to individual unemployability benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27386.

Affected Public: Individuals or households.

Estimated Annual Burden: 10,833 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 130,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18545 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0101]

Agency Information Collection (Eligibility Verification Reports) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0101'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0101.''

SUPPLEMENTARY INFORMATION:

Titles: Eligibility Verification Reports (EVR).

a. Eligibility Verification Report Instructions, VA Form 21–0510.

b. Old Law and Section 306 Eligibility Verification Report (Surviving Spouse), VA Form 21–0512S–1.

c. Old Law and Section 306 Eligibility Verification Report (Veteran), VA Form 21–0512V–1.

d. Old Law and Section 306 Eligibility Verification Report (Children Only), VA Form 21–0513–1.

e. DIC Parent's Eligibility Verification Report, VA Forms 21–0514 and 21–0514–1.

f. Improved Pension Eligibility Verification Report (Veteran With No Children), VA Forms 21–0516 and 21–0516–1.

g. Improved Pension Eligibility Verification Report (Veteran With Children), VA Forms 21–0517 and 21–0517–1.

h. Improved Pension Eligibility Verification Report (Surviving Spouse With No Children), VA Forms 21–0518 and 21–0518–1.

i. Improved Pension Eligibility Verification Report (Child or Children), VA Forms 21–0519C and 21–0519C–1.

j. Improved Pension Eligibility Verification Report (Surviving Spouse With Children), VA Forms 21–0519S and 21–0519S–1.

OMB Control Number: 2900–0101.

Type of Review: Extension of a currently approved collection.

Abstract: VA uses Eligibility Verification Reports (EVR) forms to verify a claimant's continued entitlement to benefits. Claimants who applied for or receives Improved Pension or Parents' Dependency and Indemnity Compensation must promptly notify VA in writing of any changes in entitlement factors. EVRs are required annually by beneficiaries whose social security number (SSN) or whose spouse's SSN is not verified, or who has income other than Social Security. Recipients of Old Law and Section 306 Pension are no longer required to submit annual EVRs unless there is a change in their income.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at pages 27383–27384.

Affected Public: Individuals or households.

Estimated Annual Burden: 113,075 hours. The annual burden for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 98,775 and 14,300 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Estimated Average Burden per Respondent: The estimated burden respondent for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 30 minutes and 40 minutes for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Frequency of Response: Annually.

Estimated Number of Respondents: 219,000. The number of respondents for VA Forms 21–0512S–1, 21–0512V–1, 21–0513–1, 21–0514, 21–0514–1, 21–0516, 21–0516–1, 21–0518, 21–0518–1, 21–0519C, and 21–0519C–1 is 197,550

and 21,450 for VA Forms 21–0517, 21–0517–1, 21–0519S, and 21–0519S–1.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18546 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0661]

Agency Information Collection (Forms and Regulations for Grants to States for Construction and Acquisition of State Home Facilities) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0661'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0661.''

SUPPLEMENTARY INFORMATION:

Title: Forms for Grants to States for Construction and Acquisition of State Home Facilities, VA Forms 10–0388–1, 10–0388–2, 10–0388–3, 10–0388–4, 10–0388–5, 10–0388–6, 10–0388–7, 10–0388–8, 10–0388–9, 10–0388–10, 10–0388–12, 10–0388–13.

OMB Control Number: 2900–0661.

Type of Review: Revision of a currently approved collection.

Abstract: State governments complete VA Forms 10–0388–1, 10–0388–2, 10–0388–3, 10–0388–4, 10–0388–5, 10–0388–6, 10–0388–7, 10–0388–8, 10–0388–9, 10–0388–10, 10–0388–12, 10–0388–13, to apply for State Home Construction Grant Program and to certify compliance with VA requirements. VA uses this information, along with other documents submitted by States to determine the feasibility of the projects for VA participation and to determine eligibility for a grant award.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27385.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden per Respondent: 24 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 50.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18547 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Agency Information Collection (Offer To Purchase and Contract of Sale) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0029'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0029.''

SUPPLEMENTARY INFORMATION:

Titles

a. Offer to Purchase and Contract of Sale, VA Form 26–6705.

b. Credit Statement of Prospective Purchaser, VA Form 26–6705b.

c. Addendum to VA Form 26–6705 Offer to Purchase and Contract of Sale, VA Form 26–6705d.

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract

a. VA Form 26–6705 is completed by private sector sales broker to submit an offer to purchase VA-acquired property on behalf of a prospective buyer. VA Form 26–6705 becomes a contract of sale if VA accepts the offer to purchase. It serves as a receipt for the prospective buyer for his/her earnest money deposit, describes the terms of sale, and eliminates the need for separate transmittal of a purchase offer.

b. VA Form 26–6705b is used as a credit application to determine the prospective buyer's creditworthiness in instances when the prospective buyer seeks VA vendee financing. In such sales, the offer to purchase will not be accepted until the buyer's income and credit history have been verified and a loan analysis has been completed.

c. VA Form 26–6705d is an addendum to VA Form 26–6705 for use in the state of Virginia. The form requires the buyer to be informed of the State's law at or prior to closing the transaction.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 11, 2011, at page 27380.

Affected Public: Individuals or households.

Estimated Annual Burden

a. VA Form 26–6705—10,000 hours.
b. VA Form 26–6705b—7,333 hours.
c. VA Form 26–6705d—125 hours.

Estimated Average Burden per Respondent

a. VA Form 26–6705—20 minutes.
b. VA Form 26–6705b—20 minutes.
c. VA Form 26–6705d—5 minutes.
Frequency of Response: On occasion.

Estimated Number of Total Respondents

a. VA Form 26–6705—30,000.
b. VA Form 26–6705b—22,000.
c. VA Form 26–6705d—1,500.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18548 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0629]

Agency Information Collection (Application for Extended Care Services); Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before August 22, 2011.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0629'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 461–0966 or e-mail *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0629.''

SUPPLEMENTARY INFORMATION:

Title: Application for Extended Care Services, VA Form 10–10EC.

OMB Control Number: 2900–0629.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–10EC is used to gather current income and financial information from nonservice-connected veterans and their spouse when applying for extended care services and to establish a co-payment agreement for such services. VA provides extended care to non-service connected veterans who are unable to defray the necessary expenses of care if their income is not greater than the maximum annual pension rate. VA uses the data collected to establish the veteran's eligibility for extended care services, financial liability, if any, of the veteran to pay if accepted for placement or treatment in extended care services, and to determine the appropriate co-payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 18, 2011, at pages 28851–28852.

Affected Public: Individuals or Households.

Estimated Total Annual Burden: 9,000 hours.

Estimated Average Burden per Respondent: 90 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18549 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

Proposed Information Collection (Application for Individualized Tutorial Assistance) Activity; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection and allow 60 days for public comment in response to this notice. This notice solicits comments on the information needed to determine an applicant's eligibility for tutorial assistance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0171'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or Fax (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Individualized Tutorial Assistance, VA Form 22–1990t.

OMB Control Number: 2900–0171.

Type of Review: Extension of a currently approved collection.

Abstract: Students receiving VA educational assistance and need tutoring to overcome a deficiency in one or more course complete VA Form 22–1990t to apply for supplemental allowance for tutorial assistance. The student must provide the course or courses for which he or she requires tutoring, the number of hours and charges for each tutorial session and the name of the tutor. The tutor must certify that he or she provided tutoring at the specified charges and that he or she is not a close relative of the student. Certifying officials at the student's educational institution must certify that the tutoring was necessary for the student's pursuit of program; the tutor was qualified to conduct individualized tutorial assistance; and the charges for the tutoring did not exceed the customary charges for other students who receive the same tutorial assistance.

Affected Public: Individuals or households.

Estimated Annual Burden: 350 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 700.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18550 Filed 7–21–11; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0717]

Proposed Information Collection (Child Care Subsidy) Activity: Comment Request

AGENCY: Human Resources Management, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Human Resources Management (HRM), 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 new collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to determine VA employees' eligibility to participate in VA's child care subsidy program.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before September 20, 2011.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Katie McCullough–Bradshaw, Human Resources Management (058), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *Katie.McCullough-Bradshaw@mail.va.gov.* Please refer to ''OMB Control No. 2900–0717'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Katie McCullough-Bradshaw at (202) 461–7076 or FAX (202) 275–7607.

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, HRM invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of HRM's functions, including whether the information will have practical utility; (2) the accuracy of HRM'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.

Titles

a. Child Care Subsidy Application Form, VA Form 0730a.

b. Child Care Provider Information (For the Child Care Subsidy Program), VA Form 0730b.

OMB Control Number: 2900–0717.

Type of Review: Extension of a currently approved collection.

Abstracts

a. VA employees complete VA Form 0730a to request participation in VA's child care subsidy program. VA will use the data collected to determine the percentage of monthly cost to be subsidized for child care.

b. VA Form 0730b is completed by the child care provider. The data will be used to determine whether the child care provider is licensed and/or regulated by the state to perform child care.

Affected Public: Individuals or households.

Estimated Annual Burden

a. VA Form 0730a—667 hours.
b. VA Form 0730b—333 hours.

Estimated Average Burden per Respondent

a. VA Form 0730a—20 minutes.
b. VA Form 0730B—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents

a. VA Form 0730a—2,000.
b. VA Form 0730b—2,000.

Dated: July 19, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–18551 Filed 7–21–11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Department of Veterans Affairs

Veterans' Rural Health Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Rural Health Advisory Committee will conduct a teleconference call meeting on Tuesday, August 2, 2011, from 2 p.m. to 4 p.m., in Room GL20 of the Office of Rural Health, 1722 I Street, NW., Washington, DC. The toll-free number for the meeting is 1–800–767–1750, and the access code is 19929#. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on health care issues affecting enrolled Veterans residing in rural areas. The Committee examines programs and policies that impact the provision of VA health care to enrolled Veterans residing in rural areas and discusses ways to improve and enhance VA services for these Veterans.

The Committee will discuss its Annual Report to the Secretary and the agenda for the Committee's upcoming meeting which will include a Veteran

community meeting in October 2011 in Portland, Maine.

A 15-minute period will be reserved at 3:40 p.m. for public comments. Individuals who wish to address the Committee are invited to submit a 1–2 page summary of their comments for inclusion in the official meeting record. Any member of the public seeking additional information should contact Judy Bowie, Designated Federal Officer, at *rural.health.inquiry@va.gov* or (202) 461–7100.

Dated: July 18, 2011.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2011–18485 Filed 7–21–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

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Part II

Environmental Protection Agency

40 CFR Part 260, 261 and 266
Definition of Solid Waste; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261 and 266

[EPA–HQ–RCRA–2010–0742; FRL–9431–4]

RIN 2050–AG62

Definition of Solid Waste

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to revise certain exclusions from the definition of solid waste for hazardous secondary materials intended for reclamation that would otherwise be regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these proposed revisions is to ensure that the recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.

DATES: Comments must be received on or before September 20, 2011.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2010–0742 by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2010–0742.
- *Fax:* Fax comments to: 202–566–9744, Attention Docket ID No. EPA–HQ–RCRA–2010–0742.
- *Mail:* Send comments to: OSWER Docket, EPA Docket Center, Mail Code 28221T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2010–0742. Please include two copies of your comments. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th St., Washington DC 20503.
- *Hand delivery:* Deliver two copies of your comments to: Environmental Protection Agency, EPA Docket Center, Room 3334, 1301 Constitution Avenue, NW., Washington DC, Attention Docket ID No. EPA–HQ–RCRA–2010–0742. Such deliveries are only accepted during the docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID Number EPA–HQ–RCRA–2010–0742. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the OSWER Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OSWER Docket is (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: For more detailed information on specific aspects of this rulemaking, contact Marilyn Goode, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, (703) 308–8800, (*goode.marilyn@epa.gov*) or Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8672 (*atagi.tracy@epa.gov*). For information on future public meetings on this proposal, contact Amanda Geldard, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at 703–347–8975 (*geldard.amanda@epa.gov.*) Information regarding these public meetings will also be posted at EPA's Web site at: *http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm.*

SUPPLEMENTARY INFORMATION:

A. Does this action apply to me?

Entities potentially affected by today's action include between 6,500 to 9,100 industrial facilities (depending on the regulatory option(s) selected) in upwards of 622 industries that generate or recycle hazardous secondary materials that are (1) Currently regulated as RCRA Subtitle C hazardous wastes, (2) hazardous secondary materials currently excluded under the 2008 DSW final rule (three exclusions), or (3) hazardous secondary materials currently excluded from RCRA Subtitle C under other recycling exclusions (32 exclusions). Most of the 622 industries have relatively few counts of potentially affected entities and are not listed here. There are 27 industries with the largest counts of potentially affected entities which EPA evaluated in detail in its ''Regulatory Impact Analysis'' (RIA) for today's action. These industries in ascending code order by 6-digit NAICS codes are: (1) 323110 Commercial Lithographic Printing; (2) 324110 Petroleum Refineries; (3) 325188 All Other Basic Inorganic Chemical Manufacturing; (4) 325199 All Other Basic Organic Chemical Manufacturing; (5) 325211 Plastics Material and Resin Manufacturing; (6) 325412 Pharmaceutical Preparation Manufacturing; (7) 325510 Paint and Coating Manufacturing; (8) 325998 All Other Miscellaneous Chemical Product and Preparation Manufacturing; (9)

326199 All Other Plastics Product Manufacturing; (10) 331111 Iron and Steel Mills; (11) 331492 Secondary Smelting, Refining & Alloying of Nonferrous Metal (except Copper, Aluminum); (12) 332312 Fabricated Structural Metal Manufacturing; (13) 332812 Metal Coating, Engraving (except Jewelry and Silverware) and Allied Services to Manufacturers; (14) 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; (15) 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; (16) 333415 Air Conditioning, Warm Air Heating Equipment, and Commercial and Industrial Refrigeration Equipment Manufacturing, (17) 334412 Bare Printed Circuit Board Manufacturing; (18) 334413 Semiconductor and Related Device Manufacturing; (19) 334418 Printed Circuit Assembly, (20) 336399 All Other Motor Vehicle Parts Manufacturing; (21) 336412 Bare Printed Circuit Board Manufacturing; (22) 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing; (23) 541710 Research & Development in the Physical, Engineering, and Life Sciences; (24) 562211 Hazardous Waste Treatment and Disposal; (25) 611310 Colleges, Universities and Professional Schools; (26) 622110 General Medical and Surgical Hospitals; and (27) 928110 National Security.

In aggregate, the RIA estimates the future average annualized costs to industry to comply with the seven proposed revisions at between $7.2 million to $13.1 million per year under a lower-bound state adoption scenario, which results in 13% of recycling facilities implementing the revisions, and between $7.4 million to $47.5 million per year under an upper-bound state adoption scenario, which results in 74% of recycling facilities implementing the revisions. This range reflects uncertainty about the ultimate number of states which may voluntarily adopt the proposed revisions. More information on the potentially affected entities, industries, and industrial materials, as well as the economic impacts of this proposed rule, is presented in Section XVII.A of this preamble and in the Regulatory Impact Analysis available in the docket for this final rule.

B. What To Consider When Preparing Comments for EPA

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark all information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask for commenters to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If estimating burden or costs, explain methods used to arrive at the estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate any concerns and suggest alternatives.
- Make sure to submit comments by the comment period deadline identified above.

Preamble Outline

I. Statutory Authority
II. List of abbreviations and acronyms
III. What is the intent of this proposal?
IV. What is the scope of this proposal?
V. History of the Definition of Solid Waste
VI. Definition of Solid Waste Environmental Justice Analysis
VII. Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Legitimate Reclamation
VIII. Alternative Subtitle C Regulation for Hazardous Recyclable Materials
IX. Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator
X. Revisions to the Definition of Legitimacy
XI. Revisions to Solid Waste Variances and Non-Waste Determinations
XII. Request for Comment on Re-Manufacturing Exclusion
XIII. Request for Comment on Revisions to Other Recycling Exclusions and Exemptions
XIV. Effect of This Proposal on Other Programs
XV. Implementation Issues With 2008 DSW Final Rule
XVI. State Authorization
XVII. Administrative Requirements for This Rulemaking

I. Statutory Authority

These regulations are proposed under the authority of sections 2002, 3001, 3002, 3003, 3004, 3007, 3010, and 3017 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976 (RCRA), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), 42 U.S.C. 6921, 6922, 6923, and 6924. This statute is commonly referred to as ''RCRA.''

II. List of Abbreviations and Acronyms

CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act.
CFR—Code of Federal Regulations.
DOT—Department of Transportation.
DSW—Definition of Solid Waste.
EPA—Environmental Protection Agency.
HSWA—Hazardous and Solid Waste Amendments of 1984.
LDR—Land Disposal Restrictions.
NAICS—North American Industry Classification System.
NPL—National Priority List.
RCRA—Resource Conservation and Recovery Act of 1976.
RIA—Regulatory Impact Analysis.

III. What is the intent of this proposal?

Today's proposal would revise and clarify the RCRA definition of solid waste (DSW) for certain types of hazardous secondary materials that are currently conditionally excluded from the definition of solid waste. These exclusions were promulgated in October 2008 (73 FR 64688, October 30, 2008) and were intended to encourage the recovery and reuse of valuable resources as an alternative to land disposal or incineration, while at the same time maintaining protection of human health and the environment.

In response to concerns raised by stakeholders about potential increases in risks to human health and the environment from hazardous secondary materials, EPA is proposing to revise the 2008 DSW final rule in order to ensure that the rule, as implemented, encourages reclamation in a way that protects human health and the environment from the mismanagement of hazardous secondary materials.

IV. What is the scope of this proposal?

In today's notice, EPA is proposing to revise the definition of solid waste regulations that were promulgated in October 2008 and that deal with the regulatory status of certain types of

hazardous secondary materials sent for reclamation. The 2008 DSW final rule does not apply to recycling of ''inherently waste-like'' materials (40 CFR 261.2(d)); recycling of hazardous secondary materials that are ''used in a manner constituting disposal,'' or ''used to produce products that are applied to or placed on the land''(40 CFR 261.2(c)(1)); or for ''burning of hazardous secondary materials for energy recovery'' or ''used to produce a fuel or otherwise contained in fuels'' (40 CFR 261.2(c)(2)).

The regulatory changes being proposed today are summarized below. The intent of this summary is to give a brief overview of the proposed changes. More detailed discussions, including the Agency's rationale for the changes, are discussed in later sections. In addition, to aid commenters in their review, EPA has also included in the docket for today's proposal an informational redline/strikeout version of the proposed revised regulations as compared to the current Code of Federal Regulations.

A. Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Reclamation

EPA is proposing to replace the exclusion at 40 CFR 261.4(a)(24) and (25) for hazardous secondary materials that are transferred from the generator to other persons for the purpose of reclamation with an alternative Subtitle C regulation for hazardous recyclable materials.[1] (See Section VIII for a detailed discussion of the alternative regulatory approach.) EPA's new analyses of potential hazards posed by the 2008 DSW final rule indicate that, when implemented, the transfer-based exclusion may pose significant risk to human health and the environment from hazardous secondary material that may become discarded. While the transfer of materials is inherent in ordinary commerce and does not automatically indicate discard has occurred, in the case of hazardous secondary materials transferred for reclamation, EPA has determined that only a specific set of hazardous secondary materials and reclamation practices clearly do not involve discard. Based on new EPA analyses, EPA believes that in most cases, hazardous secondary materials transferred to another party for reclamation are discarded and are best regulated under RCRA Subtitle C. Further discussion of this proposed withdrawal can be found in Section VII of this preamble.

B. Alternative Subtitle C Regulation for Hazardous Recyclable Materials

EPA is proposing to replace the transfer-based exclusion with an alternative Subtitle C regulation in 40 CFR 266.30 for hazardous recyclable materials, with the intention of promoting the safe and sustainable reclamation of these materials. Under these alternative requirements, the hazardous recyclable materials must be managed according to the current RCRA Subtitle C requirements, including manifesting and hazardous waste permits for storage, except that generators may accumulate hazardous recyclable materials for up to a year without a RCRA permit if the generator makes advance arrangements for legitimate reclamation and documents those arrangements in a reclamation plan. EPA also requests comment on setting an upper limit on the amount of hazardous recyclable material accumulated at the generator at any one time. Further discussion of these proposed alternative standards can be found in Section VIII of this preamble.

C. Revisions to the Exclusion for Hazardous Secondary Materials Reclaimed Under the Control of the Generator

EPA is proposing to retain the exclusion for hazardous secondary materials reclaimed under the control of the generator with certain revisions, including (1) adding a regulatory definition of ''contained'' to 40 CFR 260.10; (2) making notification a condition of the exclusion; (3) adding a recordkeeping requirement for speculative accumulation in 40 CFR 261.1(c)(8); and (4) adding a recordkeeping requirement for reclamation under toll manufacturing agreements in 40 CFR 261.4(a)(23)(i)(C). EPA is also requesting comment on whether to withdraw the toll manufacturing provision of the exclusion. Further discussion of these proposed revisions can be found in Section IX of this preamble.

D. Legitimacy

EPA is also proposing revisions to the definition of legitimacy in 40 CFR 260.43, including (1) applying the codified definition to all recycling activities regulated under 40 CFR 260–266; (2) making all legitimacy factors mandatory, with a petition process for instances where a factor is not met, but the recycling is still legitimate; and (3) requiring documentation of legitimacy. Further discussion of these proposed revisions can be found in Section X of this preamble.

E. Revisions to Solid Waste Variances and Non-Waste Determinations

EPA is also proposing revisions to the solid waste variances and non-waste determinations found in 40 CFR 260.30–260.34 in order to foster greater consistency on the part of implementing agencies and help ensure the protectiveness of the implementation of the solid waste variances and non-waste determinations. Proposed revisions include (1) requiring facilities to re-apply for a variance in the event of a change in circumstances that affects how a material meets the criteria upon which a solid waste variance has been based; (2) requiring facilities to re-notify every two years with updated information; (3) revising the criteria for the partial reclamation variance to more clearly explain when the variance applies and to require, among other things, that the criteria for this variance must be reviewed and evaluated collectively; (4) revising the criteria for the non-waste determination in 40 CFR 260.34 and requiring that petitioners demonstrate why the existing solid waste exclusions would not apply to their hazardous secondary materials; and (5) designating the Regional Administrator as the EPA recipient of petitions for variances and non-waste determinations. Further discussion of these proposed revisions can be found in Section XI of this preamble.

F. Request for Comment on Re-Manufacturing Exclusion

EPA is also requesting comment on an exclusion from the definition of solid waste for specific types of higher-value hazardous secondary materials sent for re-manufacturing into similar products and on a petition process for higher-value hazardous secondary materials that are not included within this exclusion, but that are destined to be re-manufactured into similar products. This exclusion would help promote sustainable materials management by extending the productive use of these materials and thus minimizing the amount of raw materials used overall and all the associated environmental impacts of production. Further discussion of this possible exclusion can be found in Section XII of this preamble.

[1] A hazardous secondary material is a secondary material (*e.g.,* spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under 40 CFR part 261. A hazardous recyclable material is a hazardous wastes that is recycled. Unlike hazardous secondary materials, hazardous recyclable materials have clearly been discarded and therefore are always solid wastes.

G. Request for Comment on Revisions to Other Recycling Exclusions and Exemptions

EPA is also requesting comment on revisions that would affect other definition of solid waste exclusions and hazardous waste exemptions for recyclable materials. These possible revisions include (1) recordkeeping for speculative accumulation in all cases; (2) requiring facilities to re-notify every two years with updated information on their operating status under the various exclusions and exemptions; and (3) containment standards for excluded hazardous secondary material. Further discussion of these possible revisions can be found in Section XIII of this preamble.

V. History of the Definition of Solid Waste

A. Background

RCRA gives EPA the authority to regulate hazardous wastes (see, *e.g.,* RCRA sections 3001–3004). The original statutory designation of the subtitle for the hazardous waste program was Subtitle C and the national hazardous waste program is referred to as the RCRA Subtitle C program. Subtitle C is codified at 42 USC 6921 through 6939f. ''Subtitle C'' regulations are found at 40 CFR parts 260 through 279. ''Hazardous wastes'' are those that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may (1) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (2) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed (see RCRA section 1004(5)). Hazardous wastes are a subset of solid wastes.

Materials that are not solid wastes are not subject to regulation as hazardous wastes under RCRA Subtitle C. Thus, the definition of ''solid waste'' plays a key role in defining the scope of EPA's authorities under Subtitle C of RCRA. The statute defines ''solid waste'' as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* * * * resulting from industrial, commercial, mining, and agricultural operations, and from community activities * * *'' (RCRA Section 1004 (27) (emphasis added)).

Since 1980, EPA has interpreted ''solid waste'' under its Subtitle C regulations to encompass both materials that are destined for final, permanent treatment and placement in disposal units, as well as certain materials that are destined for recycling (see 45 FR 33090–95, May 19, 1980; 50 FR 604–656, January 4, 1985 (see in particular pages 616–618)). EPA has offered three arguments in support of this:

- The statute and the legislative history suggest that Congress expected EPA to regulate certain materials that are destined for recycling as solid and hazardous wastes (see 45 FR 33091, citing numerous sections of the statute and *U.S. Brewers' Association* v. *EPA,* 600 F. 2d 974 (DC Cir. 1979); 48 FR 14502–04, April 3, 1983; and 50 FR 616–618, January 4, 1985).
- Hazardous secondary materials stored or transported prior to recycling have the potential to present the same types of threats to human health and the environment as hazardous wastes stored or transported prior to disposal. In fact, EPA has found that recycling operations have accounted for a number of significant damage incidents. For example, hazardous secondary materials destined for recycling were involved in one-third of the first 60 filings under RCRA's imminent and substantial endangerment authority and in 20 of the initial 160 sites listed under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (48 FR 14474, April 4, 1983). Congress also cited some damage cases which involve recycling (H.R. Rep. 94–1491, 94th Cong., 2d Sess., at 17, 18, 22). More recent data (*i.e.,* information on damage incidents occurring after 1982) included in the rulemaking docket for today's proposed rule corroborate the fact that recycling operations can and have resulted in significant damage incidents.
- Excluding all hazardous secondary materials destined for recycling would allow materials to move in and out of the hazardous waste management system depending on what any person handling the hazardous secondary materials intended to do with them, which is inconsistent with the RCRA mandate to track hazardous wastes and control them from ''cradle to grave.''

Hence, RCRA confers on EPA the authority to regulate discarded hazardous secondary materials even if they are destined for recycling and may be beneficially reused. The Agency has therefore developed in part 261 of 40 CFR a definition of ''solid waste'' for Subtitle C regulatory purposes. (*Note:* This definition is narrower than the definition of ''solid waste'' for RCRA endangerment and information-gathering authorities. (See 40 CFR 261.1(b). Also *Connecticut Coastal Fishermen's Association* v. *Remington Arms Co.,* 989 F.2d 1305, 1315 (2d Cir.1993) holds that EPA's use of a narrower and more specific definition of solid waste for Subtitle C purposes is a reasonable interpretation of the statute. See also *Military Toxics Project* v. *EPA,* 146 F.3d 948 (DC Cir. 1998).)

EPA has consistently asserted that hazardous secondary materials are not excluded from regulation as solid wastes merely because of a claim that they will be recycled. EPA has consistently considered hazardous secondary materials intended for ''sham recycling'' (*i.e.,* disposal performed in the guise of recycling) to be discarded and, hence, to be solid wastes for Subtitle C purposes (see 45 FR 33093, May 19, 1980; 50 FR 638–639, January 4, 1985). The U.S. Court of Appeals for the DC Circuit has agreed that materials undergoing sham recycling are discarded and, consequently, are solid wastes under RCRA (see *American Petroleum Institute* v. *EPA,* 216 F.3d 50, 58–59 (DC Cir. 2000)).

B. A Series of DC Circuit Court Decisions on the Definition of Solid Waste

Because the interpretation of what constitutes a solid waste is the foundation of the hazardous waste regulatory program, there has been quite a bit of litigation over the meaning of ''solid waste'' under Subtitle C of RCRA. Specifically, industries representing mining and oil refining interests challenged EPA's January 1985 regulatory definition of solid waste. In 1987, the DC Circuit held that EPA exceeded its authority ''in seeking to bring materials that are not discarded or otherwise disposed of within the compass of 'waste' '' (*American Mining Congress* v. *EPA* (''*AMC I*''), 824 F.2d 1177, 1178 (DC Cir. 1987)). The Court held that certain of the materials EPA was seeking to regulate were not ''discarded materials'' under RCRA section 1004(27). The Court also held that Congress used the term ''discarded'' in its ordinary sense, to mean ''disposed of'' or ''abandoned'' (824 F.2d at 1188–89). The Court further held that the term ''discarded materials'' could not include materials '' * * * destined for beneficial reuse or recycling in a continuous process by the generating industry itself (because they) are not yet part of the waste disposal problem'' (824 F.2d at 1190). The Court held that Congress had directly spoken to this issue, so that EPA's definition was not entitled to deference under *Chevron U.S.A., Inc.* v. *NRDC,* 467 U.S. 837 (1984) (824 F.2d at 1183, 1189–90, 1193).

At the same time, the Court held that recycled materials could be regulated as

discarded materials. The Court mentioned at least two examples of recycled materials that may be regulated as wastes, noting that used oil can be considered a solid waste (824 F.3d at 1187 (fn 14)). Also, the Court suggested that materials disposed of and recycled as part of a waste management program may be regulated as solid wastes (824 F. 2d at 1179).

Subsequent decisions by the DC Circuit also indicate that some materials destined for recycling may be considered ''discarded.'' In particular, the Court held that emission control dust from steelmaking operations listed as hazardous waste ''K061'' is a solid waste, even when sent to a metals reclamation facility, at least where that is the treatment method required under EPA's land disposal restrictions program (*American Petroleum Institute* v. *EPA* (''*API I*''), 906 F.2d 729 (DC Cir. 1990)). In addition, the Court held that it is reasonable for EPA to consider as discarded (and solid wastes) listed wastes managed in units that are in part wastewater treatment units, especially where it is not clear that the industry actually reuses the materials (*AMC II,* 907 F. 2d 1179 (DC Cir. 1990)).

It also is worth noting that two other Circuits also have held that EPA may regulate at least some materials destined for reclamation rather than final discard. The U.S. Court of Appeals for the Eleventh Circuit found that ''[i]t is unnecessary to read into the term 'discarded' a congressional intent that the waste in question must finally and forever be discarded'' (*U.S.* v. *ILCO,* 996 F.2d 1126, 1132 (Eleventh Cir. 1993) (finding that used lead batteries sent to a reclaimer have been ''discarded once'' by the entity that sent the battery to the reclaimer)). In addition, the Fourth Circuit found that slag held on the ground untouched for six months before sale for use as road bed could be a solid waste (*Owen Electric Steel Co.* v. *EPA,* 37 F.3d 146, 150 (4th Cir. 1994)).

In 1998, EPA promulgated a rule in which EPA regulated under Subtitle C hazardous secondary materials recycled by reclamation within the mineral processing industry, the ''LDR Phase IV rule'' (63 FR 28556, May 26, 1998). In that rule, EPA promulgated a conditional exclusion for all types of mineral processing hazardous secondary materials destined for reclamation. As a condition of the exclusion, EPA prohibited the land-based storage of these mineral processing secondary materials prior to reclamation because it considered hazardous secondary materials from the mineral processing industry that were stored on the land to be solid wastes (63 FR 28581, May 26, 1998). The conditional exclusion decreased regulation over spent materials stored prior to reclamation, but increased regulation over by-products and sludges that exhibit a hazardous characteristic and that are stored prior to reclamation. EPA noted that the statute does not authorize it to regulate ''materials that are destined for immediate reuse in another phase of the industry's ongoing production process.'' EPA, however, took the position that hazardous secondary materials that are removed from a production process for storage are not ''immediately reused,'' and therefore are ''discarded'' (63 FR 28580, May 26, 1998).

The mining industry challenged the rule, and the DC Circuit vacated the provisions that expanded EPA regulation over characteristic by-products and sludges destined for reclamation (*Association of Battery Recyclers* v. *EPA* (''*ABR*''), 208 F.3d 1047 (DC Cir. 2000)). The Court held that it had already resolved the issue presented in ABR in its opinion in *AMC I,* where it found that ''* * * Congress unambiguously expressed its intent that 'solid waste' (and therefore EPA's regulatory authority) be limited to materials that are 'discarded' by virtue of being disposed of, abandoned, or thrown away'' (208 F.2d at 1051). It repeated that materials reused within an ongoing industrial process are neither disposed of nor abandoned (208 F.3d at 1051–52). It explained that the intervening *API I* and *AMC II* decisions had not narrowed the holding in *AMC I* (208 F.3d at 1054–1056).

Notably, the Court did not hold that storage before reclamation automatically makes materials ''discarded.'' Rather, it held that ''* * * at least some of the secondary material EPA seeks to regulate as solid waste (in the mineral processing rule) is destined for reuse as part of a continuous industrial process and thus is not abandoned or thrown away'' (208 F.3d at 1056).

In its most recent opinion dealing with the definition of solid waste, *Safe Food and Fertilizer* v. *EPA* (''*Safe Food*''), 350 F.3d 1263 (DC Cir. 2003), the DC Circuit upheld an EPA rule that excludes from the definition of solid waste hazardous secondary materials used to make zinc fertilizers, and the fertilizers themselves, as long as the recycled materials meet certain handling, storage, and reporting conditions and the resulting fertilizers have concentration levels for lead, arsenic, mercury, cadmium, chromium, and dioxins that fall below specified thresholds (Final Rule, ''Zinc Fertilizers Made From Recycled Hazardous Secondary Materials'' (''Fertilizer Rule''), 67 FR 48393, July 24, 2002). EPA determined that if these conditions are met, the hazardous secondary materials used to make the fertilizer have not been discarded. The conditions also apply to a number of recycled materials not produced in the fertilizer production industry, including certain zinc-bearing hazardous secondary materials, such as brass foundry dusts.

EPA's reasoning was that market participants, consistent with the EPA-required conditions in the rule, would treat the exempted materials more like valuable products than like negatively-valued wastes and, thus, would manage them in ways inconsistent with discard. In addition, the fertilizers derived from these recycled feedstocks are chemically indistinguishable from analogous commercial products made from raw materials (350 F.3d at 1269). The Court upheld the rule based on EPA's explanation that market participants manage materials in ways inconsistent with discard, and the fact that the levels of contaminants in the recycled fertilizers were ''identical'' to the fertilizers made with virgin raw materials (also called ''the identity principle''). The Court held that this interpretation of ''discard'' was reasonable and consistent with the statutory purpose. The Court noted that the identity principle was defensible because the differences in health and environmental risks between the two types of fertilizers are so slight as to be substantively meaningless.

The Court also stated that it ''need not consider whether a material could be classified as a non-discard exclusively on the basis of the market-participation theory'' (350 F.3d at 1269). The Court only determined that the combination of market participants' treatment of the materials, EPA-required management standards, and the ''identity principle'' constitutes a reasonable set of tools to establish that the recycled hazardous secondary materials and fertilizers are not discarded.

C. October 2003 Proposal To Revise the Definition of Solid Waste

Prompted by concerns articulated in various Court opinions decided up to that point, in October 2003, EPA proposed a rule which defined those circumstances under which hazardous secondary materials would be excluded from RCRA's hazardous waste regulations because they are generated and reclaimed in a continuous process within the same industry. In addition, the Agency also clarified in a regulatory context the concept of ''legitimate recycling,'' which has been a key component of RCRA's regulatory

program for hazardous material recycling, but which up to that point, had been implemented without specific regulatory criteria (68 FR 61558, October 28, 2003).

In response to the October 2003 DSW proposal, a number of commenters criticized the Agency for not having conducted a study of the potential impacts of the proposed regulatory changes. These commenters expressed the general concern that deregulating hazardous secondary materials that are reclaimed in the manner proposed could result in the mismanagement of these materials, and could create new cases of environmental damage that would require remedial action under Federal or state authorities. Some of the commenters further cited a number of examples of environmental damage that were attributed to hazardous secondary material recycling, including sites listed on the Superfund National Priorities List (NPL).

Other commenters to the 2003 DSW proposal expressed the view that the great majority of these cases of recycling-related environmental problems occurred before RCRA, CERCLA, or other environmental programs were established in the early 1980s. These commenters argued that these environmental programs—most notably, RCRA's hazardous waste regulations and the liability provisions of CERCLA—have created strong incentives for proper management of recyclable hazardous secondary materials and recycling residuals. Several commenters further noted that, because of these developments, industrial recycling practices have changed substantially since the early 1980s and present day generators and recyclers are much better environmental stewards than in the pre-RCRA/-CERCLA era. Thus, they argued that cases of ''historical'' recycling-related environmental damage are not particularly relevant when modifying the current RCRA hazardous waste regulations for hazardous secondary materials recycling.

D. Recycling Studies

In light of these comments on the 2003 DSW proposal, and in deliberating on how to proceed with the rulemaking effort, the Agency decided that additional information on hazardous secondary material recycling would benefit its regulatory decision-making, and would provide stakeholders with a clearer picture of the hazardous secondary material recycling industry in this country. Accordingly, the Agency examined three issues that we believed were of particular importance to revising the definition of solid waste:

- How do responsible generators and recyclers of hazardous secondary materials ensure that recycling is done in an environmentally safe manner?
- To what extent have hazardous secondary material recycling practices resulted in environmental problems since enactment of major waste management statutes, and why?
- Are there certain economic forces or incentives specific to hazardous secondary material recycling that can explain why environmental problems can sometimes originate from such recycling activities?

Reports documenting these studies are available in the docket for the 2008 DSW final rule under the following titles:

- *An Assessment of Good Current Practices for Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0354) (''study of successful recycling'').
- *An Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0355) (''environmental problems study'').
- *A Study of Potential Effects of Market Forces on the Management of Hazardous Secondary Materials Intended for Recycling* (EPA–HQ–RCRA–2002–0031–0358) (''market forces study'').

In the study of successful recycling, EPA found that responsible recycling practices used by generators and recyclers to manage hazardous secondary materials fall into two general categories. The first category includes the audit activities and inquiries performed by a generator of a hazardous secondary material to determine whether the entity to which it is sending such material is equipped to manage it responsibly without the risk of releases or other environmental damage. These recycling and waste audits of other companies' facilities are common to those generators that responsibly recycle in the hazardous secondary materials market. The second category of responsible recycling practices consists of the control practices that ensure responsible management of any given shipment of hazardous secondary material, such as the contracts under which the transaction takes place and the tracking systems that can inform a generator that its hazardous secondary material has been properly managed.

The goal of the environmental problems study was to identify and characterize environmental problems that have been attributed to some types of hazardous secondary material recycling that are relevant for the purpose of this rulemaking effort. To address commenters' concerns that historic damages are irrelevant to current practices because environmental programs (post-RCRA and -CERCLA implementation) have created strong incentives for proper management of recyclable hazardous secondary materials, EPA only included cases where damages occurred after 1982. The study identifies 208 cases in which environmental damages of some kind occurred from some type of recycling activity and that otherwise fit the scope of the study.[2] The Agency believes that the occurrence of certain types of environmental problems associated with post-1982 recycling practices shows that discard has occurred. In particular, instances where hazardous secondary materials were abandoned (*e.g.,* in warehouses) and which required removal overseen by a government agency and the expenditure of public funds clearly demonstrate that the hazardous secondary material was discarded. Of the 208 damage cases, 69 cases (33%) involve abandoned materials. The relatively high incidence of abandoned materials likely reflects the fact that bankruptcies or other types of business failures were associated with 138 (66%) of the cases.

In addition, the pattern of environmental damages that resulted from the mismanagement of recyclable materials (including contamination of soils, groundwater, surface water and air) is a strong indication that the hazardous secondary materials were generally not managed as valuable commodities and were discarded. Of the 208 damage cases, 81 cases (40%) primarily resulted from the mismanagement of recyclable hazardous secondary materials, while mismanagement of recycling residuals was the primary cause in 71 cases (34%). Often, in the case of mismanagement of recycling residuals,

[2] EPA initially identified over 800 potential damage cases, most of which were not included in the analysis because (1) the damages occurred before 1982, (2) the damages were not caused by recycling, or (3) there was not enough information to determine when the damages occurred or whether recycling contributed to the damages. The cases EPA considered, but did not include, were listed in an appendix to the report to allow the public to comment on whether additional cases should be included in the analysis. As a result of public comment, EPA identified one new damage case and updated two existing damage case profiles with more information about environmental problems, as detailed in *Addendum: An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0601). EPA determined that the new damage case and supplemental information were consistent with the damage cases previously cited in the study.

reclamation processes generated residuals in which the toxic components of the recycled materials were separated from the non-toxic components, and these portions of the hazardous secondary material were then mismanaged and discarded. Examples of this include a number of drum reconditioning facilities, where large numbers of used drums were cleaned out to remove small amounts of remaining product, such as solvent, and these wastes were then improperly stored or disposed, while the drums were reused or recycled.

The market forces study used accepted economic theory to describe how various market incentives can influence a firm's decision-making process when recycling hazardous secondary materials. This study helps explain some of the possible fundamental economic drivers of both the successful and unsuccessful recycling practices.

As pointed out by some commenters to the 2003 DSW proposed rule, the economic forces shaping the behavior of firms that recycle hazardous secondary materials are often different from those at play in manufacturing processes using virgin materials. The market forces study used economic theory to provide information on how certain characteristics can influence three different recycling models to encourage or discourage an optimal outcome. The three recycling models examined were (1) commercial recycling, where the primary business of the firm is the recycling of hazardous secondary materials that are accepted from off-site industrial sources (which usually pay a fee); (2) industrial intra-company recycling, where firms generate hazardous secondary materials as by-products of their main production processes and recycle the hazardous secondary materials for sale or for their own reuse in production; and (3) industrial inter-company recycling, where firms either use or recycle hazardous secondary materials obtained from other firms, with the objective of reducing the cost of their production inputs. The report looked at how the outcome from each model is potentially affected by three market characteristics: (1) The value of the recycled product, (2) the price stability of recycling output or inputs, and (3) the net worth of the firm.

An individual firm's decision-making is based on many factors and extrapolating a firm's likely behavior from a few factors could be an over-simplification. However, when used in conjunction with other information, the economic theory can be quite illuminating. For example, according to the market forces study, industrial intra- and inter-company recyclers have more flexibility in adjusting to unstable recycling markets (*e.g.,* during price fluctuations, these companies can more easily switch from recycling to disposal or from recycled inputs to virgin inputs). Therefore, they would be expected to be less likely to have environmental problems from over-accumulated materials.

On the other hand, in certain types of commercial recycling, the product has low value, the prices are unstable, and/or the firm has a low net worth. Facilities in these situations can be more susceptible to environmental problems from the over-accumulation or mishandling of hazardous secondary materials, especially when compared to recycling by a well-capitalized firm that yields a product with high value. These predicted outcomes appear to be supported by the results of the environmental problems study, which showed the majority of environmental damages occur at off-site commercial recyclers.

However, as shown by the study of successful recycling, generators who might otherwise bear a large liability from poorly-managed recycling at other companies have addressed this issue by carefully examining the recyclers to which they send their hazardous secondary materials to ensure that they are technically and financially capable of performing the recycling. In addition, we have seen that successful recyclers (both commercial and industrial) have often taken advantage of mechanisms, such as long-term contracts to help stabilize price fluctuations, allowing recyclers to plan their operations more effectively.

Further discussion of the recycling studies, including the methodology and limitations of the studies, can be found in the March 2007 supplemental proposal (72 FR 14178–83), and the October 2008 DSW final rule (73 FR 64673–74) and the studies themselves can be found in the docket for the 2008 DSW final rule (EPA–HQ–RCRA–2002–0031–0355).

E. March 2007 Supplemental Proposal To Revise the Definition of Solid Waste

In March 2007, EPA published a supplemental proposal that provided the public the opportunity to comment on these studies. The Agency also re-structured the proposed rule and proposed (1) two exclusions for hazardous secondary materials recycled under the control of the generator (one exclusion would apply to hazardous secondary materials managed in non-land-based units, and the other exclusion would apply to hazardous secondary materials managed in land-based units) and (2) an exclusion for hazardous secondary materials transferred to another party for reclamation. The Agency also proposed a non-waste determination petition process, and re-proposed the legitimacy criteria, with certain modifications (72 FR 14172, March 26, 2007).

For the exclusions of hazardous secondary materials reclaimed under the control of the generator, EPA described three circumstances under which we believed that discard does not take place and where the potential for environmental releases is low. The three situations involve hazardous secondary materials that are generated and legitimately reclaimed at the generating facility, legitimately reclaimed at a different facility within the same company, or legitimately reclaimed through a tolling arrangement. Under all three circumstances, the hazardous secondary materials must be generated and reclaimed within the United States or its territories. Because the hazardous secondary material generator in these situations still finds value in the hazardous secondary materials, has retained control over them, and intends to use them, EPA proposed to exclude these materials from the definition of solid waste and, thus, from regulation under Subtitle C of RCRA, provided the reclamation is legitimate and the hazardous secondary materials are contained and not speculatively accumulated. In addition, EPA proposed that facilities generating and reclaiming hazardous secondary materials under the control of the generator must submit notification to their regulatory authority.

For the exclusion of hazardous secondary materials transferred to another party for reclamation (referred to as the transfer-based exclusion), the Agency proposed conditions that, when met, would indicate that these hazardous secondary materials were not discarded. For example, one of the conditions would require the generator to make reasonable efforts, a form of due diligence, to determine that its hazardous secondary materials would be properly and legitimately recycled (and that the hazardous secondary material would not be discarded). Another condition would require the reclamation facility to have adequate financial assurance (thus demonstrating that the hazardous secondary material would not be abandoned). In addition, EPA proposed that both the generator and reclaimer would be required to maintain shipping records (to demonstrate that the hazardous

secondary material was sent for reclamation and was received by the reclaimer). Furthermore, the reclaimer would be subject to additional storage and residual management standards (to address the instances of discard observed at off-site reclamation facilities in the damage cases). Finally, facilities operating under the transfer-based exclusion must also submit notification to their regulatory authority.

In addition, the 2007 DSW supplemental proposal included a case-by-case non-waste determination petition process that would allow applicants to receive a formal determination from EPA that their hazardous secondary materials were not discarded and therefore were not solid wastes. The case-by-case petition process would allow EPA or the authorized state to take into account the particular fact pattern of the recycling and to determine that the hazardous secondary materials in question were not solid wastes. The petition process for the non-waste determination was the same as that for the variances from the definition of solid waste found at 40 CFR 260.31.

EPA also proposed a definition of legitimate recycling that restructured the legitimacy factors originally proposed in October 2003. The proposed legitimacy factors would be used to determine that the recycling of hazardous secondary materials is not a ''sham'' and is not waste treatment.

F. October 2008 Final Rule To Revise the Definition of Solid Waste

In October 2008, EPA promulgated a final rule largely as proposed in March 2007, with some revisions and clarifications, including (1) clarifying that hazardous secondary materials held at a transfer facility for less than 10 days are considered to be in transport (and therefore such transfer facilities are not considered to be storing the hazardous secondary materials for the purpose of the DSW exclusion), (2) allowing the use of intermediate facilities that store hazardous secondary materials for more than 10 days under the transfer-based exclusion, provided the facilities comply with the same conditions applicable to reclamation facilities, (3) requiring facilities operating under the generator-controlled and/or the transfer-based exclusion to notify their regulatory authority prior to operating under the exclusion and every other year thereafter, and (4) making legitimacy a condition of the exclusions and the non-waste determinations in that rule, but not finalizing the legitimacy language for all recycling activities.

G. Section 7004 Petition Submitted by the Sierra Club and Industry Response

On January 29, 2009, the Sierra Club submitted an administrative petition under RCRA section 7004(a), 42 U.S.C. 6974(a), to the Administrator of EPA requesting that the Agency repeal the October 2008 revisions to the definition of solid waste rule and stay the implementation of the rule.

The administrative petition was submitted at the same time that the American Petroleum Institute (API) and Sierra Club filed judicial Petitions for Review under RCRA section 7006(a), 42 U.S.C. 6976(a) challenging the rule in the United States Court of Appeals for the District of Columbia Circuit (DC Circuit). These cases, designated as Docket Nos. 09–1038 and 1041, respectively, are currently before the DC Circuit.

The petition argued that the revised regulations are unlawful and that they increase threats to public health and the environment without producing compensatory benefits and, therefore, should be repealed. Among other things, the petition singled out the lack of regulatory definitions for key conditions of the rule and disagreed with the Agency's findings that the rule would have no adverse environmental impacts, including the finding there would be no adverse impact to environmental justice communities or children's health.

On March 6, 2009, a coalition of industry associations (''industry coalition'') submitted a letter to the Administrator of EPA in response to the Sierra Club petition. This letter requested that EPA deny Sierra Club's petition on the grounds that the 2008 DSW final rule comports with court cases construing the scope of the definition of solid waste under RCRA, and that the 2008 DSW final rule achieves significant economic and conservation benefits, while imposing significant controls on the hazardous secondary material recycling industry that are fully protective of the environment. The letter also responds to each of the specific points raised by Sierra Club in its petition.

H. June 2009 Public Meeting and the Draft DSW Environmental Justice Analysis Methodology

In response to Sierra Club's administrative petition and the industry coalitions letter to the Administrator, EPA issued a May 27, 2009, **Federal Register** notice (74 FR 25200) describing possible actions and optional paths forward, as well as announcing a public meeting on June 30, 2009, to allow the public and interested stakeholders the opportunity to provide input to the decision-making process.

In the May 27, 2009, **Federal Register** notice announcing the public meeting, EPA described the scope of possible action, which is governed by the concept of ''discard.'' As stated in RCRA section 1004(27), ''solid waste'' is defined as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material * * * resulting from industrial, commercial, mining and agricultural activities.'' The May 2009 public meeting notice said that ''[b]ecause the final revisions to the definition of solid waste are closely tied to EPA's interpretation of ''discard,'' EPA does not expect to completely repeal the rule or stay its implementation, because such an action could result in hazardous secondary materials that are not discarded being regulated as hazardous waste. In particular, EPA said that it does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process. However, the Agency stated that it could revise other parts of the definition of solid waste rule, such as the definition of legitimacy and the transfer-based exclusion, in ways that could increase environmental protection, while still appropriately defining when a hazardous secondary material being reclaimed is a solid waste'' (74 FR 25203).

Thirty-three people spoke at the public meeting, and approximately 4,000 written comments were received, of which the majority were from private citizens who wrote in via a mass e-mail campaign to repeal the rule. The remaining comments came from state and local governments (17), the generating industry (28), the waste management/recycling industry (15), environmental, public health and community organizations (12), and academics (2). Industry comments were uniformly in favor of denying the Sierra Club petition to repeal the rule, citing legal issues and the protectiveness of the rule's conditions. Environmental and community organizations, on the other hand, were uniformly in favor of repealing the rule, expressing concerns over the protectiveness, enforceability and environmental justice and children's health impacts of the rule. Waste management/recycling industry comments were split, with hazardous waste recyclers generally advocating that EPA retain and improve the rule with more stringent standards. Other

waste management industry comments, particularly those from companies representing landfills and incinerators, were in favor of repealing the rule. State comments expressed concerns about implementing the rule, particularly given the economic climate, and generally were in favor of repealing or significantly revising the transfer-based exclusion. EPA appreciates all the comments that were provided and has carefully considered them in deciding to revisit the definition of solid waste in today's proposal. A copy of the public meeting transcript and the comments submitted in response to the public meeting notice are available in the docket for the public meeting (Docket ID number EPA–HQ–RCRA–2009–0315).

Many commenters (including those at the public meeting and those who responded with written comments) expressed strong concerns that the Agency did not adequately address environmental justice in the rulemaking. In response to the concerns over the environmental justice analysis, EPA committed to perform a more rigorous and thorough analysis of the environmental justice impacts of the 2008 DSW final rule. On January 15, 2010, EPA released for public input a draft methodology for conducting the DSW Environmental Justice Analysis. The draft methodology was presented to the National Environmental Justice Advisory Committee (NEJAC) and discussed at three public roundtable meetings.

I. Settlement Agreement With the Sierra Club

1. Overview of Settlement Agreement

On September 7, 2010, EPA signed a settlement agreement with the Sierra Club under which the Sierra Club agreed to withdraw their administrative petition and EPA agreed to prepare a notice of proposed rulemaking to be signed no later than June 30, 2011, which would address, at a minimum, the issues raised in the Sierra Club's administrative petition, including the four issues discussed in the May 27, 2009, public meeting **Federal Register** notice (74 FR 25200). The settlement agreement did not specify the outcome of the final rule or specifically what regulatory changes EPA would propose. A notice taking final administrative action concerning the notice of proposed rulemaking is to be signed no later than December 31, 2012.

The settlement agreement was approved by the court on January 11, 2011. Today's proposal represents EPA's fulfillment of the portion of the settlement agreement concerning the proposed rule.

The four issues in the settlement agreement are (1) the definition of ''contained'' (which includes the issue of defining ''significant releases'') (addressed in Section IX.B.1 of this preamble), (2) notification before operating under the exclusion (addressed in Section IX.B.2 of this preamble), (3) the definition of ''legitimacy'' (addressed in Section X of this preamble) and (4) the transfer-based exclusion (addressed in Section VII of this preamble). Other issues presented in the administrative petition are discussed below.

2. Request to Immediately Stay the Implementation of and Revoke the 2008 DSW Rule

The Sierra Club's administrative petition included a request to immediately stay and revoke the 2008 DSW final rule. To support this request, the petition asserted that the damage case study demonstrates that hazardous waste recycling has caused substantial harm to health and the environment and that the 2008 DSW final rule increases the likelihood of greater future harm. The petition also asserted that the 2008 DSW final rule does not account for the possibility that unstable recycling markets or financial conditions increase the risk of hazardous waste abandonment. In addition, the petition asserted that the 2008 DSW final rule will not substantially increase recycling and that the economic benefits are few and will only accrue to deregulated industries. Additionally, the petition claimed that there would be job losses in the hazardous waste treatment industry and increased worker health problems as a result of the rule.

EPA addressed Sierra Club's request to revoke the 2008 DSW final rule in whole and stay its implementation in the May 27, 2009, public meeting notice, which continues to reflect EPA's current thinking. In that notice, EPA stated at 74 FR 25202:

> The scope of possible changes to the definition of solid waste is governed by the concept of ''discard.'' As discussed in the preamble to the DSW final rule, EPA used the concept of discard as the central organizing idea behind the October 2008 revisions to the definition of solid waste. As stated in RCRA section 1004(27), ''solid waste'' is defined as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* * * * resulting from industrial, commercial, mining and agricultural activities'' (emphasis added). Therefore, in the context of the DSW final rule, a key issue relates to the circumstances under which a hazardous secondary material that is recycled by reclamation is or is not discarded (73 FR 64675). In exercising its discretion in the DSW final rule to define what constitutes ''discard'' for hazardous secondary materials reclamation, EPA included an explanation of how each provision of the final rule relates to discard (73 FR 64676–64679).
>
> For example, in the DSW final rule, EPA determined that if the generator maintains control over the recycled hazardous secondary material and if the material is legitimately recycled under the standards established in the final rule and not speculatively accumulated within the meaning of EPA's regulations, then the hazardous secondary material is not discarded. This is because the hazardous secondary material is being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the reclamation process, the generator ensures that the hazardous secondary materials are not discarded. (See 73 FR 64676.)
>
> Because the final revisions to the definition of solid waste are closely tied to EPA's interpretation of the concept of ''discard,'' EPA does not plan to repeal the rule in whole or stay its implementation. Such an action could result in hazardous secondary materials that are not discarded being regulated as hazardous wastes. In particular, EPA does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process.
>
> However, EPA believes that there may be opportunities to revise or clarify the definition of solid waste rule, particularly with respect to the definition of legitimacy and the transfer-based exclusion, in ways that could improve implementation and enforcement of the provisions, thus increasing environmental protection, while still appropriately defining when a hazardous secondary material being reclaimed is a solid waste and subject to hazardous waste regulation.

Today's proposal includes a discussion of several potential changes to the generator-controlled exclusion and to the non-waste determination petition process, but, for the reasons stated above, EPA did not stay the rule and is not proposing to withdraw either provision.

3. Adequacy of EPA's Analyses

Finally, the Sierra Club petition asserted that EPA's conclusion that the 2008 DSW final rule would have no adverse environmental impacts, and therefore would have no disproportional adverse impacts to minority and low-income communities, is unsupported by the administrative record. In response to these comments and similar comments by other stakeholders at the 2009 public meeting, EPA committed to producing an expanded analysis of the potential disproportionate impacts of the 2008

DSW final rule. A draft methodology for the analysis was shared with the public in January 2010, and three public roundtable discussions were held to discuss the draft methodology.[3] EPA considered the comments raised in those discussions and conducted an analysis. The analysis has undergone peer review, the results of which are included in the docket for today's proposed rule. The environmental justice analysis is discussed in detail in the next section (Section VI) below.

J. Commitment to Sustainable Materials Management

In addition to addressing the environmental and public health concerns raised by the Sierra Club and other commenters, EPA also envisions today's proposal as an opportunity to discuss focused approaches to revising the hazardous waste recycling regulations to promote sustainable materials management, while ensuring protection of human health and the environment. Sustainable materials management is an approach to serving human needs by using/reusing resources most productively and sustainably throughout their life cycles, generally minimizing the amount of materials involved and all the associated environmental impacts. Sustainable materials management is a core element of RCRA's resource conservation objectives.

The shift to sustainable materials management by taking a life-cycle approach to managing materials is articulated in EPA's *2020 Vision Report: Sustainable Materials Management: The Road Ahead,*[4] which was endorsed by both the Environmental Council of the States (ECOS) and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO).[5] Sustainable materials management, as articulated in the ''2020 Vision Report,'' is aligned also with the vision and efforts of the World Business Council for Sustainable Development.[6]

Sustainable materials management helps identify opportunities to reduce environmental impacts, including greenhouse gas reductions, and societal impacts across the life cycle of materials from how they are extracted, manufactured, distributed, used, reused, recycled, and disposed. It works to ensure unintended consequences are avoided. Efficiencies gained in a sustainable materials management approach, especially with respect to non-renewable materials, can result in less energy used, more efficient use of materials, more efficient movement of goods and services, conservation of water, and reduced volume and toxicity of waste.

By considering system-wide impacts, sustainable materials management casts a far broader net than traditional waste and chemicals management approaches and represents a change in how we think about environmental protection. Hazardous waste regulations can only influence a small part of the picture, but to the extent that the Agency can use today's proposal to help advance these goals, while ensuring protection of human health and the environment, EPA believes that it makes sense to do so.

VI. Definition of Solid Waste Environmental Justice Analysis

To achieve the goals of Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* EPA must consider environmental justice when developing a regulation. Because decisions involving a regulation must be informed by a consideration of a number of different issues, an environmental justice analysis is one of several analyses the Agency uses when developing regulations. The environmental justice analysis may be qualitative and/or quantitative and is designed to provide the appropriate information on disproportionately high and adverse impacts to minority and/or low-income populations to decision-makers. To the extent an environmental justice analysis reveals potential disproportionately high adverse impacts on minority and/or low-income populations, this result can affect how EPA uses its policy discretion under applicable authorities to pursue specific regulatory options or provide opportunities to involve the public in the implementation of regulations.

The purpose of the DSW environmental justice analysis is two-fold. First, the analysis represents a systematic examination of the potential for an increase in adverse impacts under the 2008 DSW final rule (considered independently from which communities might be impacted). Second, the analysis includes a demographic analysis characterizing the extent any potential adverse impacts are likely to affect minority and/or low-income communities. The results of this analysis have informed EPA's decision-making on which regulatory options to pursue, within scope of the Agency's authority to regulate hazardous waste.

The methodology for the DSW environmental justice analysis consists of six steps:

Step 1: Hazard characterization	Includes two phases: (1) Identifying potential hazards that could pose risks to human health and the environment from recycling of hazardous secondary materials, including accidental releases of hazardous constituents and (2) analyzing the likelihood of such hazards occurring under the requirements of the 2008 DSW exclusions as compared to the pre-2008 DSW hazardous waste regulations.
Step 2: Identification of potentially affected communities.	Modeling the locations of facilities (including potential new facilities) that are likely to choose to take advantage of the 2008 DSW final rule.
Step 3: Demographics of potentially affected communities.	Mapping the location of the facilities modeled in Step 2 and identifying the demographics (*e.g.,* minority population and income level) of the surrounding communities.
Step 4: Identifying other factors that affect vulnerability in potentially affected communities.	Identifying important vulnerability factors. These include factors that may increase the likelihood of ''damages,'' the likelihood that a facility is sited within a community, or the likelihood of health risks in the event of releases. Examples include the presence of other pollution sources and any information about the public health of the surrounding population.
Step 5: Information synthesis: assessment of disproportional impact.	Synthesizing all the information to characterize whether the 2008 DSW rule will facilitate the occurrence of any adverse impacts and whether some population groups (*e.g.,* minority or low income populations) would be overrepresented in the impacted communities.

[3] U.S. EPA. *Draft Environmental Justice Methodology for the Definition of Solid Waste Rule,* January 2010, *http://www.epa.gov/epawaste/hazard/dsw/ej.htm.*

[4] *http://www.epa.gov/waste/inforesources/pubs/vision.htm.*

[5] Environmental Council of the States Resolution 10–1 on National Sustainable Materials Management, approved March 23, 2010, and Letter from Gary Baughman, president, ASTSWMO, to Matt Hale, Director, Office of Solid Waste, U.S. EPA, February 3, 2010.

[6] *http://www.wbcsd.org/web/projects/BZrole/Vision2050-FullReport_Final.pdf.*

Step 6: Identification of potential preventive and mitigation strategies.	Identifying potential strategies to prevent non-compliance and releases to the environment and also strategies to mitigate any impacts identified under step 5.

A brief description of the six steps is presented below.

A. Step 1—Hazard Characterization

The first step of the methodology is hazard characterization, which includes both identifying the potential hazards that hazardous secondary materials recycling could pose to human health and the environment, and evaluating the likelihood of such hazards resulting in increased risk under the 2008 DSW final rule. In conducting this analysis, EPA, assessed a number of different scenarios, which reflect how such hazardous secondary materials may be managed.

With respect to the first part of the analysis, because hazardous secondary materials sent to recycling are physically and chemically similar, if not identical to many of the hazardous wastes sent for treatment and disposal, the potential risks from their management are similar, if not the same, as from hazardous wastes sent for treatment and disposal. The most commonly recycled hazardous secondary materials are spent solvents and electric arc furnace dust (which is recycled to reclaim metals). Spent solvents present particular management challenges in that recycling them involves the storage of liquids containing volatile organic chemicals and includes both halogenated and non-halogenated organic chemicals, which represent a broad range of chemicals and associated hazards. Electric arc furnace dust, which is usually in a solid state, presents different management challenges, including that the dust contains high concentrations of toxic metals, the storage of the dust is typically in waste piles, and the potential for the dust to become wind-blown, or otherwise released, and the potential for toxic metals contained in this waste to leach into the ground water.

These two classes of hazardous secondary materials (as well as other hazardous secondary materials that are recycled) can pose risks via a wide variety of exposure routes and include a range of potential adverse health effects, both carcinogenic and non-carcinogenic, as well as a potential for acute impacts, such as fires and explosions.

The second part of the hazard characterization step—determining whether these hazards could result in increased risk to human health and the environment—is a complex issue because of the interactions between how the regulations are written and how they are actually implemented. Under the 2008 DSW final rule, EPA believed that the conditions of the rule, which were designed to determine when a hazardous secondary material is not discarded, would also prevent any increase in risk. For example, the condition that the hazardous secondary materials be ''contained'' was intended to address this issue. If the material is not released to the environment, there would be no increased exposure or associated risk.

However, what the 2008 analysis failed to take into account was whether the conditions of the rule—such as the ''contained'' standard—would operate as effectively in the real world as the more prescriptive requirements of the RCRA hazardous waste regulations. One of the most common criticisms of the January 2010 draft environmental justice methodology was that it did not include consideration of the potential for adverse impact from removing some of the important protections of the hazardous waste regulations, particularly the public participation requirements, which were also not considered by the Agency when developing the 2008 DSW final rule.

A more detailed comparative analysis of the regulatory requirements under the 2008 DSW final rule with the hazardous waste regulations reveals potentially significant gaps in environmental protection under the 2008 DSW final rule, particularly the incentives to accumulate larger volumes of hazardous secondary materials, the reduction in oversight resulting from eliminating the permit requirement for storage, and the reduction in the public's access to information and the opportunity for public participation. The specific gaps vary depending on the baseline scenario and the post-DSW scenario being considered,[7] and in some cases, there is also a potential for increased benefits, primarily from resource conservation and from reduced transportation distances.[8]

B. Step 2—Identification of Potentially Affected Communities

The second step of the methodology identified those potential facilities that can represent the facilities that are likely to take advantage of the 2008 DSW final rule. These facilities are grouped into four different categories: (1) Facilities that have already notified under the 2008 DSW final rule (''Notification Facilities''), (2) facilities from the environmental problems study (many of which operated under various exclusions or reduced regulations) which have documented environmental damages from recycling activities (''Damage Case Facilities''), (3) hazardous waste facilities that are likely to recycle under the rule (including hazardous waste generators producing more than a truckload (25 tons) of recyclable hazardous secondary materials annually, and hazardous waste recyclers) (''Hazardous Waste Facilities''), and (4) facilities currently recycling non-hazardous industrial waste (*e.g.,* antifreeze) that could most easily switch or expand to recycling under the 2008 DSW final rule (''Non-Hazardous Industrial Waste Facilities'').

C. Step 3—Demographics of Potentially Affected Communities

The third step characterized the demographics of the communities within a three-kilometer radius around these facilities and determined whether they had a larger proportion of minority and/or low-income individuals as compared to the nation as a whole, and as compared to the population in the state.[9] The comparison was done at both at the *community* and at the *population* level.

For the community-level analysis, the question is whether the communities

[7] The specific scenarios evaluated were (1) generator continues current recycling practices; (2) generator switches from off-site disposal to on-site reclamation; (3) generator switches from off-site disposal to off-site recycling under the control of the generator; (4) generator switches from off-site disposal to off-site recycling at a RCRA-permitted facility; (5) generator switches from off-site disposal to off-site recycling at a U.S. facility without a RCRA permit; (6) generator switches from off-site disposal to exporting for recycling; (7) generator switches from off-site recycling at a facility without a permit to another type of recycling under the 2008 DSW final rule; and (8) generator switches from off-site recycling at a RCRA-permitted facility or exporting waste for recycling to another type of recycling under the 2008 DSW final rule.

[8] By reporting the potential for increased benefits under certain scenarios, EPA does not intend to imply that such benefits could justify increased risk to human health and the environment from discarded hazardous secondary material. Promoting resource conservation and recovery is a major goal of RCRA, but this goal does not supersede the mandate to assure that hazardous waste management practices are protective of human health and the environment.

[9] EPA chose a three-kilometer radius as an approximation of the potential area that could be affected by an acute release scenario (such as a fire or explosion) at a reclamation facility. EPA focused on the acute scenario because such a scenario posed the most immediate harm to public health.

around a facility had a higher or lower percentage of minority and/or low-income population as compared to the comparison population (*i.e.,* national or state population). In general, some communities will have a higher percentage than the comparison population, while some communities will have a lower percentage. As long at these differences have a regular, or uniform, distribution, they generally would not indicate potential for disproportionate adverse impact. However, if the number of communities with a higher percentage of minority and/or low-income population is greater than that of the comparison populations, then there is a potential for disproportionate adverse impact. The higher the average differences between the potentially affected communities and the comparison group, the greater the potential for a disproportionate adverse impact.

In the chart below, the category that consistently demonstrates the potential for disproportionate adverse impact are the damage case facilities, which is the third category of facilities identified in Step 2, although a few other categories indicates the potential for disproportionate adverse impact in a few instances.[10] For both the national and the state comparison populations, more than 50 percent of the damage case facilities are located in communities with minority and low-income populations that have a higher representation than the comparison populations. In addition, the average difference in these cases (*i.e.,* the average amount that these facilities have a higher-than-average percentage of minorities or low-income populations) ranges from 6–8 percent.

COMMUNITY-LEVEL ANALYSIS OF POTENTIAL DISPROPORTIONATE ADVERSE IMPACTS OF 2008 DSW FINAL RULE TO MINORITY AND LOW-INCOME COMMUNITIES

[Values greater than 50% indicate potential disproportionate impact]

	National comparison % communities with *higher minority representation* (average difference)	National comparison % communities with *higher low-income representation* (average difference)	State comparison % communities with *higher minority representation* (average difference)	State comparison % communities with *higher low-income representation* (average difference)
Facilities that Have Notified (40 total)	7.5% (−20.7%)	32.5% (−2.0%)	50.0% (IA) (3.1%) 20.0% (NJ) (−11.0%) 31.3% (PA) (−2.3%)	64.0% (IA) (1.7%) 0% (NJ) (−3.7%) 50% (PA) (2.6%)
Damage Case Facilities (217 total)	53% (8.2%)	65% (5.9%)	55.8% (8.2%)	69% (6.7%)
Hazardous Waste Facilities (2,677 total)	42% (0.9%)	48% (1.5%)	47.9% (4.0%)	50.6% (1.8%)
Non-Hazardous Industrial Waste Facilities (25 total)	36% (−5.0%)	40% (−0.5%)	36% (−2.55%)	44% (−0.3%)

The population-level analysis examines the demographics of *the total potentially affected population*[11] as compared to the total comparison population to determine (1) whether there is a substantially greater probability of members in a population group of concern (minority or low-income) being present as compared to members of the comparison population, and (2) whether members of the population group of concern comprised a substantially greater proportion of the potentially affected population than the comparison populations. These two comparisons are referred to as (1) the Affected Population Ratio, and (2) the Demographic Ratio. In both cases, if the ratio is greater than 1.0, then there is a potential for disproportionate adverse impact to the population of concern, and the larger the ratio, the greater the disproportionality.

[10] For the damage cases, EPA notes that demographic data is not necessarily matched to the temporal period associated with the beginning of the damage case. For example, if the damage case began in 1990, EPA did not examine demographics from 1990, but rather the demographics were from 2000.

[11] The total affected population is the sum of each of the populations around all the facilities in a category.

POPULATION-LEVEL ANALYSIS OF POTENTIAL DISPROPORTIONATE IMPACTS OF 2008 DSW RULE TO MINORITY AND LOW-INCOME COMMUNITIES

[Ratios greater than 1.0 indicate potential disproportionate impact to population of concern all results statistically significant (p-value <0.05)]

	National comparison minority population affected population ratio demographic ratio	National comparison low-income population affected population ratio demographic ratio	State comparison minority population affected population ratio demographic ratio	State comparison low-income population affected population ratio demographic ratio
Notification Facilities (40 total)	0.70	1.05	1.80 (IA)	1.34 (IA)
	0.76	1.04	1.76 (IA)	1.32 (IA)
			1.02 (NJ)	0.64 (NJ) 0.65
			1.01 (NJ)	(NJ)
			1.46 (PA)	1.74 (PA)
			1.47 (PA)	1.63 (PA)
Damage Case Facilities (217 total)	2.87	1.98	2.59	2.04
	1.86	1.80	1.64	1.90
Hazardous Waste Facilities (2,677 total)	1.90	1.39	1.94	1.47
	1.80	1.50	2.04	1.83
Non-Hazardous Industrial Waste Facilities (25 total)	1.19	1.16	1.34	1.17
	1.12	1.14	1.20	1.15

The chart above shows that the population level analysis has a greater incidence of potential disproportionate adverse impact to minority and low-income populations than the community-level analysis. For the population-level analysis, the potential for disproportionate impact (*i.e.,* ratios greater than one) occurs under all categories, while the community-level analysis exhibits the potential for disproportionate impact primarily in the damage case facility category. This difference can occur when the populations of those communities that do have a greater percentage of minority or low-income individuals also have a significantly higher total population than those communities that do not. In other words, for the categories of facilities, except the damage case facilities, the facilities of concern generally do not appear to be disproportionately located in minority or low-income communities. The facilities that are located in minority and low-income communities have the potential to adverse impact much larger populations than those which are not, resulting in an overall potential disproportionate adverse impact to minority and low-income populations as a whole.

D. Step 4—Other Factors That Affect Vulnerability in Potentially Affected Communities

In addition to considering the potential for the 2008 DSW final rule to result in adverse impacts that disproportionately affect minority and low-income communities, the DSW environmental justice analysis also considers other factors that could affect the impacts of the rule, based on categories from EPA's interim guidance on incorporating environmental justice into rulemaking.[12] Two of these factors are of particular concern to the 2008 DSW final rule: Ability to participate in the decision-making process, and multiple and cumulative effects.[13]

1. Ability To Participate in the Decision-Making Process

A key element of environmental justice is ensuring that all people have an opportunity for meaningful involvement in decision-making which may impact them. Certain groups may not have historically participated in decision-making because of economic (*e.g.,* income), social (*e.g.,* language barriers, education levels, distrust of government), and infrastructural reasons (*e.g.,* access to public transportation). A critical concern is whether, and the extent to which, communities have the ability to influence the types and number of regulated activities taking place in their community, as well as the requirements, conditions, and parameters under which such activities must operate (*e.g.,* permit conditions). Under the 2008 DSW final rule, facilities claiming an exclusion must submit an initial and biennial notification to EPA or the state, providing general facility information and describing hazardous secondary material types and activities under the exclusion.

However, under the 2008 DSW final rule, this information is not made directly available to potentially affected communities, and facilities and regulators are not required to solicit or consider community input into the decision-making process as is the case with RCRA-permitted facilities.[14] Thus, by removing the RCRA permitting requirement for facilities that manage excluded hazardous secondary materials, the 2008 DSW final rule also removed one of the key provisions for allowing communities to participate in the regulatory process (at least as it concerns the management of the hazardous secondary materials excluded under the rule). Communities with lower participation levels may experience greater adverse impacts from environmental decision-making because their input has not been considered fully, particularly if competing interests are set forth more effectively. This effect is most likely to occur in communities that have traditionally been excluded from the decision-making process.

[12] U.S. EPA *Interim Guidance on Considering Environmental Justice During the Development of an Action* July 2010. *http://www.epa.gov/environmentaljustice/resources/policy/considering-ej-in-rulemaking-guide-07-2010.pdf.*

[13] The other factors are (1) susceptible populations, (2) unique exposure pathways, and (3) physical infrastructure. Because of the wide variety of locations of the facilities and the many different hazardous secondary materials involved, any one of these factors could be present at a site, but EPA does not have specific information on these factors being particularly associated with the 2008 DSW final rule.

[14] Although not required, EPA has posted on the Internet a list of facilities that have notified under the DSW exemption. The most recent list can be found at *http://www.epa.gov/epawaste/hazard/dsw/notify-sum.pdf.*

2. Multiple and Cumulative Effects

Minority, low-income, and indigenous communities that have been affected by multiple pollution sources may be at risk for increased health consequences. Potential sources of pollution can include, for example, industrial facilities, landfills, transportation-related air emissions, poor housing conditions (*e.g.,* lead-based paint), leaking underground storage tanks, pesticides, and incompatible land uses. An analysis of the cumulative effects from multiple stressors can provide a more complete evaluation of a population's health risks from pollutants. For example, an analysis of discrete stressors and effects on a population might conclude that nearby pollution sources are within regulatory limits; however, an analysis of cumulative effects might determine that a person's collective exposure to a contaminant from multiple sources exceeds a health-based limit.

An examination of the facilities that have already notified under the 2008 DSW final rule shows that multiple environmental hazards are a potential concern for communities around these facilities.[15] All have multiple facilities reporting to EPA, either under RCRA, the Clean Air Act (CAA), or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA—also known as Superfund), within a three-kilometer radius of the facility.

E. Step 5—Assessment of Disproportionate Impact

As discussed under Step 1 in Section VI.A. of this preamble, the environmental justice analysis demonstrates that hazardous secondary material recycling can pose significant potential hazards to human health and the environment, and that it is reasonable to conclude that the potential for hazards from hazardous secondary materials recycling adversely impacting human health and the environment has increased under the 2008 DSW final rule. Of particular concern are (1) the absence of required measures (*e.g.,* weekly inspections, training, contingency plans, *etc.*) at hazardous secondary materials reclaimers to prevent problems (*e.g.,* spills, fires, explosions, *etc.*), (2) the incentives to accumulate larger volumes of hazardous secondary materials due to longer storage time limits and (3) the reduction in access to information and opportunity for public participation.

Moreover, as discussed under Step 3 in Section VI.C. of this preamble, some of the communities potentially impacted by this increase in risk of adverse impacts are minority and low-income communities, and in most cases the populations potentially impacted are disproportionately minority and/or low income. In particular, the population-level analysis shows a potential disproportionate impact to minority and low-income populations, with the damage case facilities, the hazardous waste facilities and the non-hazardous waste facilities all consistently showing potential statistically significant disproportionate representation in potentially affected communities. In addition, as discussed under Step 4 in Section VI.D. of this preamble, underlying vulnerabilities traditionally associated with minority and low-income communities can pose the potential to exacerbate potential adverse impacts of the 2008 DSW final rule. The ability of communities to participate in the decision-making process and potential for multiple and cumulative effects are of particular concern.

F. Step 6—Identification of Potential Strategies To Mitigate Adverse Impacts

Potential strategies to mitigate adverse impacts of the 2008 DSW final rule, including the disproportionate impacts to minority and low-income communities, include both possible regulatory changes and implementation strategies.

1. Regulatory Changes

Regulatory changes to the 2008 DSW final rule were made according to EPA's authority under RCRA to regulate discarded material. As discussed in the preamble to the 2008 DSW final rule, EPA used the concept of discard as the central organizing idea behind the October 2008 revisions to the definition of solid waste.

As stated in RCRA section 1004(27), ''solid waste'' is defined as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material * * * resulting from industrial, commercial, mining and agricultural activities.'' In exercising its discretion in the 2008 DSW final rule to define what constitutes ''discard'' for hazardous secondary materials reclamation in the 2008 DSW final rule, EPA included an explanation of how each provision of the final rule relates to discard (73 FR 64676–64679).

While the concept of discard also is the central organizing principle in this proposed rule since EPA only has authority under RCRA to regulate materials that have been discarded, the **Federal Register** notice announcing the June 2009 public meeting identified areas or opportunities to revise the 2008 DSW final rule in ways that could increase environmental protection, including in environmental justice communities, while still appropriately defining when a hazardous secondary material being reclaimed is a solid waste and subject to hazardous waste regulation (74 FR 25202). The purpose of today's proposal is to provide notice and the opportunity to comment on potential regulatory revisions to address the potential for adverse impacts to human health and the environment from discarded material, including disproportionate impacts to minority and low income communities.

In particular, the proposed withdrawal of the transfer-based exclusion and its replacement with an alternative Subtitle C standard could be one way of addressing the concerns regarding third-party recyclers, including the impact of longer accumulation times, the lack of preventative measures under the containment standard, the lack of public participation requirements, the lack of RCRA air standards, and concerns regarding certain transportation issues. In addition, the proposed codification of the ''contained'' standard could be one way of addressing the lack of preventative measures and the lack of RCRA air standards under the generator-controlled exclusion. The proposed additional recordkeeping requirements for speculative accumulation and legitimacy could be one way of helping ensure that hazardous secondary material is being legitimately recycled and not simply discarded through over-accumulation and abandonment, and recordkeeping under the tolling and same-company provisions will help ensure that the hazardous secondary materials meet their intended destinations. Each of these proposed changes are discussed in more detail in Sections VII–X of this preamble. EPA requests comment on whether there are additional or alternate regulatory approaches for addressing the potential adverse impacts of the 2008 DSW final rule.

2. Implementation Measures

In addition to considering regulatory changes to address potential adverse impacts of the 2008 DSW final rule, EPA can take steps in implementing the 2008 DSW final rule that would help mitigate any potential adverse impacts. These steps include closely monitoring the

[15] See U.S. EPA *Environmental Justice Analysis of the Definition of Solid Waste Rule,* Section 5.2, Table 5.1.

facilities notifying under the 2008 DSW final rule, making information about the DSW facilities available to the public, and working with the states and EPA Regions to ensure they have the information they need to ensure compliance with the provisions of the rule, and making available to the public information about the facilities that have notified. EPA has begun this process for the states and territories currently operating under the 2008 DSW final rule and plans to continue these efforts in order to help prevent potential adverse impacts at the same time that revisions to the rule are under consideration.

VII. Exclusion for Hazardous Secondary Materials That Are Transferred for the Purpose of Legitimate Reclamation

EPA is proposing to replace the exclusion for hazardous secondary materials that are transferred for the purpose of legitimate reclamation with an alternative Subtitle C standard. EPA believes that such a standard would be more appropriate for hazardous secondary material because (1) the Agency reasonably believes (as explained in detail in the 2008 DSW final rule) that, absent specific conditions, transfers of hazardous secondary materials to third-party reclaimers generally involve discard, and (2) the conditions of the 2008 DSW final rule have serious gaps, particularly the incentives to accumulate larger volumes of hazardous secondary materials, the reduction in oversight resulting from eliminating the permit requirement for storage, and the reduction in the public's access to information and the opportunity for public participation, that could create a potentially unacceptable likelihood of adverse effects to human health and the environment from such discarded material.

A. Summary of Transfer-Based Exclusion

The exclusion for hazardous secondary materials that are transferred for the purpose of legitimate reclamation, 40 CFR 261.4(a)(24) and (25),[16] applies to hazardous secondary materials (*i.e.,* spent materials, listed sludges, and listed by-products) that are generated and subsequently transferred to a different person or company for the purpose of reclamation. As long as the conditions and restrictions to the exclusion are satisfied, the hazardous secondary materials would not be subject to the Subtitle C hazardous waste regulations.

General requirements under this exclusion include that:

- Hazardous secondary material generators, reclaimers, and intermediate facilities (*i.e.,* facilities that would not reclaim the hazardous secondary material, but would store them for more than 10 days) must submit a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter to the EPA Regional Administrator or, in an authorized state, to the State Director (see 40 CFR 260.42), reporting volumes and types of hazardous secondary materials being reclaimed and
- Hazardous secondary materials managed at such facilities must not be speculatively accumulated as defined in § 261.1(c)(8) and must be legitimately reclaimed as specified in § 260.43.

Conditions applicable to generators of hazardous secondary materials are found at 40 CFR 261.4(a)(24)(v) and include:

- Containment of such hazardous secondary materials,
- Reasonable efforts, a form of due diligence, to ensure that the intermediate facility or reclaimer intends to manage or recycle the hazardous secondary material properly and legitimately, and
- Retention of records of off-site shipments for three years.

Conditions applicable to intermediate facilities and reclaimers of hazardous secondary materials are found at 40 CFR 261.4(a)(24)(vi) and include:

- Containment of such materials,
- Transmittal of confirmations of receipt to generators,
- Retention of records for hazardous secondary materials received and sent off-site,
- Financial assurance equivalent to that required of hazardous waste facilities, and
- (For reclaimers) proper management of any residuals generated from the reclamation activities.

In addition, if any of the hazardous secondary materials excluded under 40 CFR 261.4(a)(24) are generated and then exported to another country for reclamation, the exporter must notify and obtain consent from the receiving country and file an annual report. This export requirement is codified in 40 CFR 261.4(a)(25).

B. EPA's Rationale for Replacing the Transfer-Based Exclusion

The first part of the Agency's rationale for replacing the transfer-based exclusion is based on the fact that EPA has already determined that, absent specific conditions, it is reasonable to conclude that transfers of hazardous secondary materials to third-party recyclers generally involve discard except for instances where EPA has promulgated a case-specific exclusion that a hazardous secondary material is not a solid waste. This determination is unchanged from the 2008 DSW final rule. As noted in the preamble to the 2008 DSW final rule, generators of hazardous secondary materials who do not reclaim these materials themselves often ship these materials to a commercial facility or another manufacturer for reclamation in order to avoid the costs of disposing of the material. Because of the low commercial value and the high potential liability associated with most types of hazardous secondary materials (*i.e.,* spent materials and listed hazardous waste by-products and sludges), generators will typically pay the reclamation facility to accept these hazardous secondary materials or receive a salvage fee that only partially offsets the cost of transporting and managing them. In such situations, the generator has relinquished control of the hazardous secondary materials and the entity receiving such materials may not have the same incentives to manage them as a useful product (73 FR 64675).

This behavior of hazardous secondary materials not being managed as a useful product is evidenced by the results of the environmental problems study, found in the docket of the 2008 DSW final rule. Of the 208 damage cases discussed in the 2008 DSW final rule, 195 (or approximately 94%) were from reclamation activities of off-site third-party recyclers, with clear instances of discard resulting in risk to human health and the environment, including cases of large-scale soil and ground water contamination with remediation costs in some instances in the tens of millions of dollars (73 FR 64673).

In addition, the market forces study in the docket for the 2008 DSW final rule supports the conclusion that the pattern of discard at off-site, third-party reclaimers is a result of inherent differences between commercial recycling and normal manufacturing. As opposed to manufacturing, where the cost of raw materials or intermediates (or inputs) is greater than zero and revenue is generated primarily from the sale of the output, hazardous secondary materials recycling can involve generating revenue primarily from the receipt of the hazardous secondary materials. Recyclers of hazardous secondary materials in this situation

[16] 40 CFR 261.4(a)(24) is the primary transfer-based exclusion and 40 CFR 261.4(a)(25) contains the export requirements for the transfer-based exclusion.

may thus respond differently from traditional manufacturers to economic forces and incentives, accumulating more inputs (hazardous secondary materials) than can be processed (reclaimed). In addition, commercial recyclers have less flexibility than in-house recyclers in changing how they manage their hazardous secondary materials (*e.g.,* during price fluctuations, in-house recyclers can more easily switch from recycling to disposal or from recycled inputs to virgin inputs, while commercial recyclers cannot switch to disposal without obtaining a RCRA permit) (73 FR 64674).

The 2008 DSW final rule attempted to address this pattern of adverse impacts to human health and the environment from hazardous secondary materials transferred to a third party for recycling by setting conditions for the transfer-based exclusion. The intent of these conditions was to define when transfers to third-party recyclers would not result in discard. The link between each of the conditions and their ability to prevent discard is discussed in detail in the 2008 DSW final rule preamble at 73 FR 64675–79. However, EPA failed to take into account how the conditions of the 2008 transfer-based exclusion would work when actually implemented. EPA's analysis of the 2008 DSW final rule assumed that DSW conditions would operate with the same level of oversight as the Subtitle C hazardous waste regulations.

Which leads to the second part of EPA's rationale for replacing the transfer-based exclusion. Before excluding materials that have already been determined to be hazardous wastes, the Agency needs adequate assurance that the conditional exclusion will not result in discarded hazardous materials posing significant risks to human health and the environment (*e.g,* fires/explosion, soil and water contamination, air emissions, and abandoned hazardous secondary materials). Because EPA has already evaluated these hazardous secondary materials (for example, during a hazardous waste listing determination) and determined them to be solid and hazardous wastes, a conditional exclusion must be reasonably expected not to result in the excluded hazardous secondary material being discarded.

As discussed in more detail in Section XIII of this preamble, over the years EPA has developed many such conditional exclusions (found in 40 CFR 261.4(a)). In each of these cases, EPA did so by examining the specific hazardous secondary material, or the specific recycling practice, or both, before making a determination that they are not solid waste. However, unlike these types of specific transfer-based exclusions from the definition of solid waste (found in 40 CFR 261.4(a)), the 2008 transfer-based exclusion in 40 CFR 261.4(a)(24) and (25) did not focus on the chemical or physical properties of any particular type of hazardous secondary material, or on how it is typically managed. Instead, the transfer-based exclusion is broadly applicable to a wide range of hazardous spent materials and listed by-products and sludges. Thus, while other solid waste exclusions were developed based on EPA's knowledge of the specific hazardous secondary materials, the industries generating them, or the current recycling management practice for those hazardous secondary materials, the 2008 DSW transfer-based exclusion relied entirely on the conditions that were developed by EPA operating as the Agency anticipates they should. The conditions themselves were developed in a reasoned manner,[17] but without specific evidence that they would work as intended (*i.e.,* would not result in significant risk to human health and the environment from discarded materials).

However, the conditions for the transfer-based exclusion in the 2008 DSW final rule lack several important implementation provisions that the Subtitle C requirements for treatment, storage, and disposal facilities provide. These provisions ensure a greater level of oversight of the Subtitle C requirements, thereby increasing the likelihood of compliance and decreasing the potential for risk to human health and the environment from discarded hazardous secondary material. Most important of these is the permit requirement under RCRA section 3005, which ensures that EPA or the state has reviewed a facility's planned operations before waste management begins and which allows public participation in the environmental decision-making process under RCRA section 7004. Subtitle C requirements for treatment, storage, and disposal facilities also include a statutory provision that such facilities be inspected every two years under RCRA section 3008(e). Finally, the detailed regulatory standards for hazardous waste management help ensure that both the regulatory authority and the regulated community have the specific information they need to comply in such a way that meets EPA's expectations when the rule was promulgated. EPA has performed a detailed regulatory comparison of the 2008 DSW final rule with the hazardous waste regulations, identifying significant differences that could lead to the potential for an increased likelihood of environmental and public health hazards, including fires/explosion, soil and water contamination, air emissions, and abandoned hazardous secondary materials.[18]

EPA has also carefully monitored the implementation of the 2008 DSW final rule since it came into effect in December 2008. A total of 27 facilities are operating under the transfer-based exclusion, 23 of which are generators transferring off-site and 4 which are reclamation facilities.[19] All four reclamation facilities are RCRA permitted. (There are no unpermitted reclaimers currently operating under the transfer-based exclusion.) Of the 23 generators operating under the transfer-based exclusion, 6 generators appear to have either started or substantially increased their recycling as a result of the 2008 DSW exclusions. These six generators had previously reported in their 2007 or 2009 biennial report that they sent their solvents offsite for fuel blending, and then in 2009 or 2010 notified that they are sending their spent solvents for reclamation under the 2008 DSW final rule.[20] To date, no environmental problems have been reported at facilities claiming the DSW exclusions. However, because all reclaimers operating under the transfer-based exclusion also have RCRA hazardous waste permits, most of the novel conditions of the transfer-based exclusion (*e.g.,* reasonable efforts audits and financial assurance for reclamation facilities without a RCRA permit) have not been tested.

Based on this reconsideration of the DSW transfer-based exclusion conditions, EPA is now proposing that hazardous secondary materials transferred for the purpose of legitimate reclamation are most appropriately regulated under Subtitle C of RCRA. The evidence of past damage cases leading to significant risk to human health and the environment from hazardous secondary materials originally intended for recycling and the underlying

[17] See Chapter 11, *Regulatory Impact Analysis: EPA's 2008 Final Rule Amendments to the Industrial Recycling Exclusions of the RCRA Definition of Solid Waste,* EPA–HQ–RCRA–2002–0031–0602.

[18] See Chapter 2 and Attachment A of *EPA's Environmental Justice Analysis of the Definition of Solid Waste Rule,* available in the docket for today's proposal.

[19] Some of these facilities are also managing hazardous secondary materials under the generator-controlled exclusion.

[20] U.S. EPA, *EPA's Evaluation of Data Collected from Notifications Submitted under the 2008 Definition of Solid Waste Exclusions,* June 30, 2011.

perverse incentives of the recycling market to over-accumulate such hazardous secondary materials intended for recycling, resulting in discard of the material, indicate the need to regulate these hazardous secondary materials as hazardous waste, unless there is specific information about a hazardous secondary material or reclamation practice that indicates discard is not occurring. EPA is therefore proposing to withdraw the transfer-based exclusion found in 40 CFR 261.4(a)(24) and (25). EPA requests comment on this withdrawal, and is particularly interested in any information commenters can provide about alternative approaches that would address the concerns regarding ensuring that a transfer-based exclusion does not result in significant risk to human health and the environmental from discarded hazardous secondary material (*e.g.,* by adding more conditions, such as requiring the reclamation facility be inspected every five years, or by requiring the reclamation facility certify annually that there have been no releases).

At the same time, EPA acknowledges that some specific types of hazardous secondary materials are more like valuable commodities than solid wastes, and the act of transferring them to a third-party does not automatically involve discard. Many of the other exclusions in 40 CFR 261.4(a) are for these types of materials, and the non-waste determination process under 40 CFR 260.34(c) provides an administrative process for determining that additional hazardous secondary materials are indistinguishable from products and therefore are not waste. In addition, in Section XII of this preamble, EPA is requesting comment on a possible re-manufacturing exclusion from the definition of solid waste for certain higher-value hazardous secondary materials whose management is more like manufacturing than waste management. EPA also requests comment if there are other specific hazardous waste streams or recycling practices, that, similarly to those found in 40 CFR 261.4(a)(6)–(21), would be most appropriately addressed through a conditional exclusion due to their physical or chemical properties and/or current management practices.

VIII. Alternative Subtitle C Regulation for Hazardous Recyclable Materials

A. Purpose of the Alternative Subtitle C Regulatory Standards for Hazardous Recyclable Materials

As discussed above, after examining the potential adverse impacts to human health and the environment from discarded hazardous secondary materials transferred to another party for reclamation, EPA is proposing to replace the transfer-based exclusion with an alternative regulatory scheme for hazardous recyclable materials transferred from the generator to other persons for the purpose of reclamation. EPA recognizes the environmental benefits of safe recycling and how recycling can contribute to the goal of sustainable materials management, and acknowledges that in some cases the additional costs of Subtitle C regulation can be an economic disincentive to such recycling. However, as discussed in Section VII above, because (1) the Agency reasonably believes that, absent specific conditions, transfers of hazardous secondary materials to third-party reclaimers generally involve discard, and (2) the conditions of the 2008 DSW final rule have serious gaps that could create a potentially unacceptable likelihood of adverse effects to human health and the environment from such discarded material, the Agency has decided to replace the transferred based exclusion with an alternative hazardous waste standard.

Specifically, EPA is proposing alternative hazardous waste standards under 40 CFR part 266 subpart D for generators of hazardous recyclable materials sent for reclamation. ''Hazardous recyclable materials'' would be defined as hazardous waste being reclaimed. EPA is proposing to use this term to be consistent with other standards for the management of specific hazardous wastes in 40 CFR part 266, and to distinguish them from the ''hazardous secondary materials'' reclaimed under the control of the generator and excluded under 40 CFR 261.4(a)(23). These proposed alternative standards are designed to be as protective as the current hazardous waste standards, but tailored to the specific circumstances faced by generators of hazardous waste who would want to send their materials to a reclaimer, but are not able to do so because they cannot accumulate enough hazardous waste during the generator accumulation time limits to make such recycling economically viable.

Under these alternative standards, the hazardous recyclable material would, for the most part, be subject to all hazardous waste regulations (*i.e.,* accumulated in Subtitle C storage units, transported under a hazardous waste manifest, sent to a RCRA-permitted facility or a facility operating under 40 CFR 261.6(c)(2)). However, in order to allow generators time to accumulate enough hazardous recyclable material to make reclamation more economical, EPA is proposing alternative regulatory standards that would allow hazardous recyclable materials to be accumulated up to one year without a permit or interim status (although the hazardous waste generator standards would continue to apply).

To guard against the risks of over-accumulation and possible abandonment of hazardous recyclable materials, EPA is proposing that before operating under the alternative standard and by March 1 of each even-numbered year thereafter, a generator must notify the EPA Regional Administrator (or the State Director, if the state is authorized). In addition, before operating under the alternative standard, the generator must develop a reclamation plan that provides details of where the hazardous recyclable material will be sent for reclamation, a short description of the recycling process, and the estimated volume of materials in each shipment. Also, the generator must contact the reclaimer in advance and make arrangements for the recycling. In addition, EPA is requesting comment on setting an upper limit on the amount of hazardous recyclable material a generator may accumulate at any one time, limiting it to no more than two shipments worth of hazardous secondary materials (as documented in the reclamation plan) at any point in time. Finally, as discussed below, EPA is requesting comment on allowing an alternative manifest system for hazardous recyclable materials regulated under this provision by replacing the hazardous waste manifest with a ''hazardous recyclable materials manifest.''

B. Proposed Part 266 Standards for the Management of Hazardous Recyclable Material

Under the proposed part 266 subpart D Hazardous Recyclable Materials standards, large quantity generators and small quantity generators of hazardous recyclable materials would need to meet the alternative requirements described below.

1. Notification

Under the proposed alternative standards, generators would be required to submit a notification prior to operating under this standard and by March 1 of each even-numbered year thereafter to the EPA Regional Administrator using EPA Form 8700–12.[21] In states authorized by EPA to

[21] These notification requirements are the same as those currently found in 40 CFR 260.42.

administer the RCRA Subtitle C hazardous waste program, notifications may be sent to the state director. The notice must include:

- The name, address and EPA ID number of the facility;
- The name and telephone number of a contact person;
- The NAICS (North American Industry Classification System) code of the facility;
- The regulatory citation under which the hazardous recyclable materials will be managed (*i.e.,* 40 CFR part 266 subpart D).
- When the facility expects to begin managing the hazardous recyclable materials in accordance with the alternative standard;
- A list of hazardous recyclable materials that will be managed according to the new standard (reported as the EPA hazardous waste numbers that would apply if the hazardous recyclable materials were managed as hazardous waste);
- The quantity of each hazardous recyclable material to be managed annually; and
- The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

EPA believes that the information requested in the notification is the minimum information necessary to ensure that such hazardous recyclable materials are managed in a manner that is protective of human health and the environment.

Generators would be required to notify on a per facility basis. In other words, each generator facility managing hazardous recyclable materials would need to submit a notification form in accordance with the alternative standard. One notification cannot cover two or more generators or facilities. Furthermore, each generator need only use one notification form to list all of the hazardous recyclable materials to be managed under the exclusion at any particular facility (*i.e.,* generators need not file separate notifications for each hazardous recyclable material). We also would require facilities that stop managing hazardous recyclable materials in accordance with the exclusion to notify the Regional Administrator (or State Director) using the same EPA Form 8700–12 within 30 days after ceasing to claim the exemption.

2. Reclamation Plan

Prior to operating under the alternative standard, generators would be required to make and document advance arrangements for reclamation. These advance arrangements would be documented in a reclamation plan that (1) describes the hazardous recyclable material(s) and identifies the reclamation facility where the material will be sent, (2) includes written confirmation from the facility that they are able to reclaim the hazardous recyclable material (3) documents the amount of hazardous recyclable material expected in each shipment and the anticipated frequency of shipments, and (4) documents that the reclamation is legitimate per 40 CFR 260.43. The purpose of the reclamation plan is to ensure that the hazardous secondary material will be recycled legitimately and not over-accumulated and abandoned. The reclamation plan must be kept on-site for at least three years from the date the generator ceases to operate under the alternative standards

3. Management Standards

Generators operating under the proposed alternative standards would be able to accumulate hazardous recyclable materials on site for one year or less without a permit or without having interim status, provided that they follow the usual requirements for on-site management of hazardous wastes by large quantity or small quantity generators, with the following exceptions:

(a) While accumulated on-site, each container and tank is labeled or marked clearly with the words ''hazardous recyclable material,'' rather than being marked as ''hazardous waste.''

(b) As noted, the allowed accumulation period will be up to one year, rather than 90 or 180 days, respectively.[22]

EPA believes that the combination of the requirements of the notification and the reclamation plan (including the provision mandating advance arrangements for reclamation) would be as fully protective as the current generator times limits of 90 days for large quantity generator and 180/270 days for small quantity generators, since the reclamation plan will help demonstrate that the hazardous recyclable materials are going to be recycled and not be stored indefinitely, and the notification provision will allow proper oversight of this provision.

However, EPA also requests comment on limiting the maximum volume of a hazardous recyclable materials accumulated on-site at any one time to no more than two standard shipments to the designated facility, as identified in the generator's reclamation plan. Under such a requirement, the maximum volume would differ depending on the hazardous recyclable materials and where they are being transferred to, but it would ensure that the generator is not accumulating more than what it would need to make an off-site shipment economically feasible. (Setting the upper limit at two shipments worth would allow the generator to continue to accumulate hazardous recyclable materials while the first shipment is being prepared).

4. Transportation

Before transporting hazardous recyclable materials or offering hazardous recyclable materials for transportation off-site, a hazardous recyclable material generator would need to meet all the applicable pre-transportation requirements for hazardous waste generators under 40 CFR part 262 subparts B and C, including the need to package, label and placard the materials in accordance with Department of Transportation standards, as applicable to large or small quantity generators and preparing a hazardous waste manifest.

In addition, EPA requests comment on allowing an alternative hazardous recyclable materials manifest. Under the alternative manifest system, the same requirements (*e.g.,* filling out the manifest, recordkeeping and procedures for rejected shipments) and information would apply to hazardous recyclable materials shipped on a hazardous recyclable materials manifest as those that apply to the hazardous waste manifest, but the manifests would be labeled ''hazardous recyclable materials manifest.'' Such an alternative system would require conforming changes to 40 CFR 262.20, 262.21, 262.40(a), 262.42, the appendix to part 262, 263.20, 263.22, 264.71, 264.72, 265.71 and 265.72, plus 49 CFR 171.8 (DOT regulations) and EPA would integrate such a system into any future e-manifest systems. EPA requests comment on whether an alternative manifest would benefit the regulated community in such a way that would be worth the additional administrative effort in setting up such a system.

C. Request for Comment

EPA requests comment on the alternative standards for hazardous recyclable materials sent to reclamation, particularly on whether the longer accumulation times without requiring a hazardous waste permit or complying with the interim status standards and alternative designation of the materials as ''hazardous recyclable materials'' will

[22] Small quantity generators may accumulate hazardous waste on-site for up to 270 days if they transport, or offer the waste for transport, over a distance of 200 miles or more for off-site treatment, storage, and disposal.

help encourage legitimate reclamation. EPA notes that although the materials would be labeled as ''hazardous recyclable materials,'' they would be, by definition, still hazardous wastes and, per 40 CFR 261.5, would count towards a facility's generator status (*e.g.,* Large Quantity Generator, Small Quantity Generator). EPA requests comment on this issue.

In developing this proposed alternative standard, EPA also considered whether there were other areas, besides longer accumulation times, alternative labeling, and hazardous recyclable material manifests, where alternative standards for generators would help encourage safe and legitimate recycling of hazardous recyclable materials. Below is a discussion of the other major areas of the generator standards. EPA requests comment on whether there are other aspects of the hazardous waste generator standards where an alternative standard for hazardous recyclable material generators would pose no significant risk to human health and the environment from discarded materials and would also promote increased recycling.

1. Storage Standards

Under the proposed alternative standards, generators must meet the same design, operating, inspection, and closure standards (including air emission standards) for containers, tanks, containment buildings, and drip pads as they would under the hazardous waste regulations. One alternative would be to replace these standards with the containment standards proposed for generators operating under the generator-controlled exclusion at § 261.4(a)(23). Under that proposed provision, a hazardous secondary material is contained if it is managed in a unit, including a land-based unit as defined in § 260.10, that meets the following criteria: (1) The unit is in good condition, with no leaks or other continuing or intermittent releases of hazardous secondary materials to the environment, and is designed, as appropriate, to prevent releases of hazardous secondary materials to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; (2) a unit that is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and (3) a unit that does not hold incompatible materials and addresses any potential risks of fires or explosions.

EPA solicits comment on whether such a containment standard would help encourage generators to recycle, while posing no significant risk to human health and the environment from discarded materials.

2. Manifest

As discussed earlier, EPA is requesting comment on allowing a hazardous recyclable materials manifest as an alternative to the hazardous waste manifest. Another option may be to use basic shipping records to document off-site shipments of the hazardous recyclable materials. This approach would be similar to how universal wastes are managed under streamlined hazardous waste regulations. However, EPA notes that two of the factors used to determine if a waste is appropriate to be considered a universal waste is if the risk posed by the waste during accumulation and transport is relatively low compared to other hazardous wastes, and whether the quantities generated by each generator are relatively small (see 40 CFR 273.81).

3. Personnel Training, Contingency Plan, and Emergency Procedures

Under the proposed alternative standards, large quantity generators must meet the same personnel training, contingency plan and emergency procedures as they would under the hazardous waste requirements. One alternative could be to apply standards similar to the small quantity generator requirements for management of hazardous recyclable materials by hazardous recyclable material generators. Small quantity generator requirements for personnel training, contingency planning and emergency procedures may be particularly appropriate if EPA also, as discussed above, applies a limit to the maximum amount of hazardous recyclable materials accumulated on-site at any one time. These reduced requirements may be appropriate if the maximum quantity of hazardous recyclable materials is limited because of the decreased risks associated with smaller quantities of materials present at any point in time.

4. Biennial Report

Under RCRA Subtitle C, large quantity generators of hazardous waste must submit biennial reports to their regulatory authority that describe the type and quantity of hazardous waste generated, as well as how the waste was managed (among other information). However, a biennial reporting requirement may be duplicative of the requirement for generators of hazardous recyclable materials to renotify in compliance with 40 CFR 260.42, which also requires generators to report the type and quantity of hazardous secondary materials generated and reclaimed. Eliminating the biennial reporting requirement may avoid duplication in reporting and reduce paperwork burden on generators of hazardous recyclable materials. EPA requests comment on using the renotification in lieu of requiring biennial reports.

IX. Revisions to the Exclusion for Hazardous Secondary Materials That Are Legitimately Reclaimed Under the Control of the Generator

A. Summary of Current Exclusion

In the 2008 DSW final rule, EPA excluded from the definition of solid waste those hazardous secondary materials that are legitimately reclaimed under the control of the generator, provided the materials are contained in the units in which they are stored, are not speculatively accumulated, and are reclaimed within the United States or its territories. Under the 2008 DSW final rule, the generator must also periodically notify EPA or the authorized state (as discussed previously) that it is operating under the exclusion. The regulatory provision excluding hazardous secondary materials under the control of the generator that are managed in land-based units is currently found at 40 CFR 261.4(a)(23), while the provision excluding such materials that are managed in non-land-based units is currently found at 40 CFR 261.2(a)(2)(ii). A land-based unit is defined in 40 CFR 260.10 as an area where hazardous secondary materials are placed in or on the land before recycling, but this definition does not include land-based production units. Examples of land-based units include surface impoundments and piles. Examples of non-land-based units include tanks, containers, and containment buildings.

The definition of ''hazardous secondary material generated and reclaimed under the control of the generator'' is currently found at 40 CFR 260.10. Hazardous secondary materials are considered ''under the control of the generator'' under the following circumstances:

- They are generated and then reclaimed at the generating facility; or
- They are generated and reclaimed at different facilities, if the generator certifies that the hazardous secondary

materials are sent either to a facility controlled by the generator or to a facility under common control with the generator, and that either the generator or the reclaimer has acknowledged responsibility for the safe management of the hazardous secondary materials; or

• They are generated and reclaimed pursuant to a written agreement between a tolling contractor and toll manufacturer, if the tolling contractor certifies that it has entered into a tolling contract with a toll manufacturer and that the tolling contractor retains ownership of, and responsibility for, the hazardous secondary materials generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process.

Under this provision, the hazardous secondary materials must be contained, whether they are stored in land-based or non-land-based units. The materials are also subject to the speculative accumulation requirements of 40 CFR 261.1(c)(8), as well as the provisions for legitimate recycling at 40 CFR 260.43. Finally, under 40 CFR 260.42, the generator (and the reclaimer, if the generator and reclaimer are located at different facilities) must send a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter to the EPA Regional Administrator or, in an authorized state, to the State Director.

By maintaining control over, and potential liability for, the hazardous secondary materials and the reclamation process, the generator ensures that such materials have not been discarded. When reclaimed under the control of the generator, the hazardous secondary materials are being handled as a valuable commodity rather than a waste. However, if such hazardous secondary materials are released into the environment and are not recovered for legitimate recycling immediately, they have been discarded (*i.e.,* are solid and hazardous wastes) and the generator is subject to all applicable Federal and state regulations, as well as applicable cleanup authorities. (See 73 FR 64680, October 30, 2008 for a more detailed discussion of the generator-controlled exclusion.)

B. Proposed Changes to Generator-Controlled Exclusion

As discussed in Section V.I.2 of today's proposal, EPA is not proposing to withdraw the generator controlled exclusion. In the 2008 DSW final rule, EPA determined that if the generator maintains control over the recycled hazardous secondary materials and if the materials are legitimately recycled under the standards established in the final rule and not speculatively accumulated within the meaning of EPA's regulations, then the hazardous secondary materials are not discarded. This is because the hazardous secondary materials are being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the reclamation process, the generator ensures that the hazardous secondary materials are not discarded (see 73 FR 64676). EPA has not received any information that would cause the Agency to reverse this determination, and this continues to be the underlying rationale for the generator-controlled exclusion.

However, EPA does believe that revisions to the generator-controlled exclusion are needed in order to ensure that it operates as intended and does not result in discarded hazardous secondary material posing a significant risk to human health and the environment. The proposed changes are in five areas: (1) The contained standard, (2) notification as a condition, (3) recordkeeping for speculative accumulation, (4) recordkeeping for the tolling provision, and (5) clarifying edits to the regulatory text. In each of the five areas, the proposed changes are intended to improve the implementation of the generator-controlled exclusion to ensure that it is correctly functioning to only exclude hazardous secondary material that is not discarded.

1. Contained Standard

Under the generator-controlled exclusion, hazardous secondary materials must be contained, regardless of whether they are stored in land-based units or non-land-based units. The contained standard is a key provision for determining that a hazardous secondary material is not discarded. Hazardous secondary materials that are not contained and are instead released to the environment are not destined for recycling and are clearly discarded. In today's proposed rule, EPA is retaining the ''contained'' condition based on the same rationale used in the 2008 DSW final rule, but is adding a regulatory definition of contained to make it easier for implementing agencies and the regulatory community to determine that a material is contained.

In the preamble to the 2008 DSW final rule (73 FR 64681), the Agency stated that such material is ''contained'' if it is placed in a unit that controls the movement of the hazardous secondary materials out of the unit and into the environment. However, EPA did not provide specific guidance on how an implementing agency or the regulated community would determine if a unit did adequately control the movement of hazardous secondary materials and meet the contained standard.

In the same preamble, EPA also discussed the issue of releases to the environment from stored hazardous secondary materials and when such materials could be considered ''contained.'' We stated that in the event of a release to the environment, the hazardous secondary materials remaining in the unit may or may not meet the terms of the exclusion, and specifically stated that such hazardous secondary materials would be considered wastes if a ''significant'' release occurred as a result of its not being managed as a valuable raw material, intermediate, or product, including storing acidic materials in a tank not suitable for such materials or failure to monitor the structural integrity of a tank, resulting in releases. If these releases were not immediately recovered, they would be considered discarded and, if hazardous, subject to the appropriate Federal or state regulations and applicable authorities. The Agency also noted that a ''significant'' release is not necessarily large in volume. For example, unaddressed small releases to the environment could cause significant damage over time and, if the hazardous secondary materials are managed in such a way that such unaddressed releases are likely to continue, the hazardous secondary materials still remaining in the unit could be considered discarded because they were not being managed as a valuable raw material, intermediate, or product.

Conversely, the Agency also said that a unit in good condition could experience small releases resulting from normal operations of the facility, or a released material could be captured by secondary containment before being released to the environment. In those cases, the unit would retain its exclusion from the RCRA hazardous waste regulations and the hazardous secondary material in the unit would still be excluded from the definition of solid waste, even though any such materials that had been released would be considered discarded if not immediately recovered and would be subject to appropriate regulation.

EPA did not finalize a regulatory definition of ''contained,'' nor did the 2008 DSW final rule impose specific performance or storage standards. In response to comments on the 2007 DSW supplemental proposal suggesting such specific standards, EPA stated its belief that such detailed measures were unnecessary for hazardous secondary

materials that are handled as valuable products and are destined for recycling. Rather, in the Agency's view at that time, regulatory authorities could determine whether such hazardous secondary materials were contained by considering site-specific circumstances (such as local conditions) and measures employed by the facility (such as liners, leak detection measures, and monitoring) to determine whether the hazardous secondary materials were contained in a storage unit.

Since implementation of the 2008 DSW final rule, the Agency has reconsidered its position about whether a regulatory definition of ''contained'' might be necessary for hazardous secondary materials managed under the control of the generator. EPA has received a considerable number of inquiries from state authorities and the regulated community about how to determine if a hazardous secondary material is contained. In particular, there have been many questions about when a release is ''significant'' and when hazardous secondary materials remaining in a unit that has suffered a release should be considered discarded.

Of particular concern is the lack of preventative measures in the contained standard in the 2008 DSW final rule, which is noted as a major regulatory gap in the environmental justice analysis discussed in Section VI of this preamble. As noted above, EPA did not provide specific guidance on which types of units would be considered as adequately containing a hazardous secondary material. In the 2008 DSW final rule preamble, only the absence of containment, *i.e.,* a release to the environment, is discussed, and even then the confusion over whether a release is ''significant'' makes proper implementation of the contained standard problematic.

Given that the contained standard is one of the major requirements for determining that hazardous secondary materials reclaimed under the generator-controlled exclusion are not discarded, this lack of specificity has the potential to undermine the exclusion. That is, if the primary or only way to determine that the hazardous secondary material is not contained is to wait until it is released to the environment, then the 2008 DSW final rule increases the likelihood of discard for these materials. The Agency therefore has considered whether adding a regulatory definition of ''contained'' could resolve this uncertainty without sacrificing the flexibility that would allow the implementing authority to take into account a wide variety of case-specific circumstances when necessary.

For these reasons, EPA is today proposing to amend 40 CFR 260.10 to include a regulatory definition of ''contained.'' Under today's proposal, a hazardous secondary material is contained if it is managed in a unit, including a land-based unit as defined in § 260.10, that meets the following criteria: (1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary material, to prevent releases of the hazardous secondary materials to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and (3) the unit does not hold incompatible materials and addresses any potential risks of fires or explosions. Hazardous secondary materials in units that meet the applicable requirements of 40 CFR part 264 or 265 are considered to be contained.

This proposed definition specifies factors which, if met, demonstrate that the hazardous secondary materials in a unit are handled as valuable raw materials, intermediates, or products and thus are not being discarded. We note that the criteria in proposed 40 CFR 261.4(a)(23)(i) are all measures suggested by commenters in response to the June 2009 public meeting on the 2008 DSW final rule. These criteria also exemplify practices discussed in the preamble to that rule regarding containment of hazardous secondary materials, such as ways to prevent releases and operation and maintenance of the storage unit in the same manner as a production unit. The appropriateness of specific measures undertaken to ensure a hazardous secondary material is contained would depend on the material in the unit. For example, in the case of land-based piles of hazardous secondary materials in the form of fine particulate matter, a covering to prevent wind-blown dust could demonstrate that the unit was designed to prevent releases of such materials. On the other hand, land-based piles of hazardous secondary materials in the form of scrap metal that is unlikely be carried off by the wind would not need a covering to be considered contained.

If these criteria were not met and a release of the hazardous secondary materials subsequently occurred that was not immediately recovered, the materials remaining in the unit would be considered solid and hazardous wastes and the unit would be subject to the appropriate hazardous waste regulations.

Also, to clarify the regulatory status of units from which releases have occurred, the Agency is also proposing to add to 40 CFR 261.4(a)(23) the following: (1) A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of reclamation; and (2) hazardous secondary material managed in a unit with leaks or other continuing or intermittent unpermitted releases of the hazardous secondary material to the environment is discarded and a solid waste.

In the preamble to the 2008 DSW final rule, EPA referred to ''significant'' releases as the criterion to determine whether hazardous secondary materials remaining in the unit should be considered wastes. We believe that today's proposed codification better expresses our intent that all releases are of potential concern. However, under today's proposal, in the event of a release from a unit to the environment, the hazardous secondary materials that remain in the unit could still meet the terms of the exclusion, as long as the other provisions of the containment definition are met. A single release that is quickly addressed would not generally affect the regulatory status of the hazardous secondary materials still contained in the unit. Sometimes a material may escape from primary containment and may be captured by secondary containment or some other mechanism that would prevent the hazardous secondary materials from being released to the environment or would allow immediate recovery of the materials. In that case, the unit would not be subject to the RCRA hazardous waste regulations and the hazardous secondary materials in the unit would still be excluded from the definition of solid waste, even though any such materials that had been released would be considered discarded if not immediately recovered for reclamation and would be subject to appropriate regulation.

EPA also notes that certain units may be subject to occasional precipitation runoff that consists essentially of water, with trace amounts of hazardous constituents. For example, precipitation runoff containing trace amounts of metals may occur from units storing

furnace bricks collected from production units and stored on the ground in walled bins before being used as feedstocks in the metals production process. Similarly, metal components from fired ammunition or other scrap metal are sometimes stored on the ground before being sent for recycling, and precipitation may run off from this unit. As long as such runoff does not contain hazardous secondary material (*e.g.,* it is essentially rainwater with trace amounts of metals), it would not be considered a ''release of hazardous secondary material.'' Therefore, the runoff would not cause the land-based units to be subject to Subtitle C controls. On the other hand, if the hazardous secondary material itself is swept away by the runoff (*e.g.,* if the hazardous secondary material consists of fine particulate matter, such as electric arc furnace dust), this transport via precipitation runoff could be considered a ''release of a hazardous secondary material'' and that pile may not be considered contained.

A unit that has had a release of hazardous secondary materials and is likely to have one in the future (as demonstrated by not meeting the three factors in the standard) [23] is not ''contained'' and is therefore a solid waste and the unit would be subject to Subtitle C regulation. In order to determine whether a unit that has had a release is likely to suffer future releases, the regulatory authorities should consider all the factors in proposed 40 CFR 261.4(a)(23)(i). The Agency believes that this procedure is more likely to provide effective guidance to regulatory authorities and the regulated community than the current criterion of ''significant.''

EPA notes that under today's proposal, this definition of ''contained'' would apply to both land-based units and non-land-based units under the generator-controlled exclusion. For the reasons explained in section IX.B.5 of this preamble, EPA is proposing to place all requirements for both types of units in 40 CFR 261.4(a)(23).

The Agency solicits comment on whether the proposed changes to 40 CFR 261.4(a)(23)(i) will be effective in improving the implementability and enforceability of the ''contained'' requirement, and on whether additional requirements might be needed to achieve this end, or to ensure the hazardous secondary material is not discarded. We also request comment on whether the proposed regulatory definition of ''contained'' allows sufficient flexibility to regulatory authorities to evaluate site-specific circumstances that might be relevant to whether a hazardous secondary material could be considered discarded.

2. Notification

a. *Summary.* Under 40 CFR 260.42, hazardous secondary material generators, tolling contractors, toll manufacturers, intermediate facilities, and reclaimers managing hazardous secondary materials under 40 CFR 261.2(a)(2)(ii), 261.4(a)(23), (24), or (25), are required to submit a notification prior to operating under these exclusions and by March 1 of each even-numbered year thereafter to their regulatory authority. Facilities must also notify their regulatory authority within 30 days of stopping management of hazardous secondary materials under the rule.

The intent of the notification requirement is to provide basic information to the regulatory agencies about who will be managing hazardous secondary materials under the exclusion. The specific information included in the notification requirement enables regulatory agencies to monitor compliance and to ensure that the hazardous secondary materials are managed according to the exclusion and not discarded. Notification information is collected in EPA's RCRAInfo database, which is the national repository of all RCRA Subtitle C site identification information, whether collected by a state authority or EPA. As explained in the 2008 DSW final rule, EPA believes our authority to request such information is inherent in our authority to determine whether a material is discarded. We consider this to be the minimum information needed to enable credible evaluation of the status of hazardous secondary materials under section 3007 of RCRA and to ensure that the terms of the exclusions are being met by generators and reclaimers. EPA continues to support the underlying rationale outlined in the 2008 DSW final rule for the need to collect this information. (See 73 FR 64682, October 30, 2008, for a more detailed discussion of our authority to collect this information.)

As codified, the requirement to provide this notification is not a condition of the exclusions. Thus, although failure to comply with the requirement constitutes a violation of RCRA, it does not affect the excluded status of the hazardous secondary material.

b. *Proposed changes.* We are proposing today to make the notification provision in 40 CFR 260.42 a condition of the generator-controlled exclusion in 40 CFR 261.4(a)(23).

In the 2009 **Federal Register** notice announcing the June 2009 DSW public meeting, EPA listed as an issue for discussion whether notification should be a condition, rather than a requirement, of the exclusions. A number of commenters weighed in on both sides of this issue. On one hand, commenters stated that keeping notification as a requirement would create an unintended incentive for hazardous secondary material generators, intermediate facilities and reclaimers not to notify, because those who chose not to notify would likely evade oversight for many years and, if caught, could simply regard the violation as a ''paperwork violation,'' and regard the possible penalty for that violation as a cost of doing business. These commenters also argued that the failure of a hazardous secondary material generator, intermediate facility or reclaimer to provide notification is a strong indication that these entities are either unaware of or trying to circumvent the regulatory requirements. In both cases, these actions potentially increase the likelihood for environmental damage. Therefore, failure to notify should be regarded as more serious than a reporting violation and should remove the excluded status of the hazardous secondary materials.

Conversely, some commenters supported maintaining notification as a requirement, arguing that if an entity fails to notify, it does not necessarily indicate that the hazardous secondary materials were discarded and, therefore, should not automatically affect the excluded status of such materials.

At issue here are not the specifics of the notification in 40 CFR 260.42, but rather the consequences an entity would face for failing to notify. Thus, if notification is a requirement under the authority of RCRA section 3007 of the exclusion, it means that failure to notify would constitute a violation of the notification regulations. On the other hand, if notification is a condition of the exclusion, it means failure to notify

[23] The unit (which can include a land-based unit such as a pile) must meet the following three criteria: (1) The unit is in good condition with no leaks or other continuing or intermittent releases of hazardous secondary materials to the environment and is designed, as appropriate for the hazardous secondary material, to prevent releases of the hazardous secondary material to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures; (2) the unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary material in the unit; and (3) the unit does not hold incompatible materials and addresses any potential risks of fires or explosions.

would potentially result in the loss of the exclusion for the hazardous secondary materials (*i.e.,* the hazardous secondary materials would become solid and hazardous wastes and subject to full Subtitle C regulation).

In the 2008 DSW final rule, EPA considered the notification requirement as providing basic information to regulatory authorities, but determined that notification, in and of itself, did not allow regulatory authorities to directly determine that hazardous secondary materials were discarded. In other words, a generator or intermediate facility/reclaimer could fail to notify yet still be legitimately reclaiming (or storing the material prior to reclamation) their hazardous secondary materials according to the conditions of the exclusion (73 FR 64739, October 30, 2008).

However, the notification provision is also the only formal indication of a facility's intent to reclaim a hazardous secondary material under the conditional exemption and not discard it. For example, if during an inspection of a large quantity generator of hazardous waste, EPA were to discover a hazardous secondary material that had been stored on-site for more than 90 days without a RCRA permit (an act that would typically be a violation of the hazardous waste regulations), a previously filed notification would be an indication that the facility was planning to reclaim the hazardous secondary material under the conditions of the exclusion. Absent such a notification, it would be difficult for the facility to justify its true intentions for the hazardous secondary material. Failure to meet the notification provision would be a strong indication that the facility either did not intend to comply with or was unaware of the provisions of the exclusion, since it failed to comply with the first step for claiming the exclusion. In both cases, the lack of notification could indicate that the hazardous secondary material may be mismanaged.

Making notification a condition of the rule would further discourage facilities from trying to evade enforcement by not notifying because the costs of not notifying could be significantly higher than if notification remains a requirement. Notification is important for informing regulators and the public about hazardous secondary materials activity and, without such notification, regulators are unable to effectively monitor compliance. Additionally, state commenters have argued that enforcement discretion is commonly used to distinguish between the unintentional administrative oversight of ''not notifying'' and a blatant attempt at evading enforcement. Making notification a condition of the exclusion provides states the ability to properly enforce against this latter group, while leaving the flexibility to tailor enforcement in appropriate cases. EPA is therefore proposing today to make the notification provision in § 260.42 a condition of the generator-controlled exclusion in § 261.4(a)(23). Additionally, we are also requesting comment on making notification a condition of the re-manufacturing exclusion and of the other recycling exclusions and exemptions (see Section XII ''Request for Comment on Re-manufacturing Exclusion'' and Section XIII ''Request for Comment on Revisions to Other Recycling Exclusions and Exemptions'').

3. Recordkeeping for Speculative Accumulation

In addition to the containment provision, hazardous secondary materials that are generated and legitimately reclaimed under the control of the generator are subject to the speculative accumulation provisions of 40 CFR 261.1(c)(8). If these hazardous secondary materials are speculatively accumulated, they are considered discarded. EPA did not propose changes to the speculative accumulation provisions in the March 26, 2007, DSW proposal and has not reopened any substantive provision of the speculative accumulation requirement.

However, since implementation of the 2008 DSW final rule, EPA has received questions from regulatory authorities about enforcement of the speculative accumulation requirement. In particular, enforcement personnel have suggested that ease of enforcement would be greatly facilitated if persons subject to the speculative accumulation requirement were required to post a start date for the accumulation. In this way, inspectors and other regulatory authorities could quickly ascertain how long a facility has been storing an excluded hazardous secondary material, and, therefore, whether that facility was in compliance with the storage time limits of 40 CFR 261.4(a)(23)(iii) and 40 CFR 261.1(c)(8).

EPA agrees with this suggestion and is therefore proposing to amend 40 CFR 261.4(a)(23)(iii) to require persons operating under the generator-controlled exclusion to place a label on the storage unit indicating the first date that the excluded hazardous secondary material began to be accumulated. In cases where placing a label on the storage unit is not practicable (*e.g.,* if materials are stored in a surface impoundment), we are proposing as an alternative to amend 40 CFR 261.4(a)(23)(iii) to require persons operating under the generator-controlled exclusion to document in an inventory log the first date that the excluded hazardous secondary material began to be accumulated. EPA also notes that we are not proposing any changes or otherwise reopening the substantive requirements of the speculative accumulation condition.

The Agency notes that placing labels on storage units or entering accumulation start dates in inventory logs is likely to already be part of normal business operations at many facilities. For this reason, we believe that this proposed requirement is not unduly burdensome and will provide a greater degree of clarity and certainty both to the regulated community and to regulatory authorities who are trying to determine when excluded hazardous secondary materials began to be accumulated. EPA solicits comment on whether this proposed requirement will be effective in meeting this goal and on whether other methods of measuring storage durations and/or identifying start dates would be equally effective (such as a requirement to post accumulation start dates in storage areas, within a specified number of feet of the storage unit).

As proposed, this recordkeeping provision would only apply to the exclusion under 40 CFR 261.4(a)(23). However, the same arguments for tracking accumulation start dates could be made more broadly for all recycling subject to the speculative accumulation limits. Thus, EPA is also requesting comment on whether to add this recordkeeping requirement to the speculative accumulation provision in 40 CFR 261.1(c)(8) itself.

4. Tolling Provision

Under the 2008 DSW final rule, hazardous secondary materials are eligible for the generator-controlled exclusion if they are generated and reclaimed pursuant to a written agreement between a tolling contractor and toll manufacturer, if the tolling contractor certifies that it has entered into a contract with a toll manufacturer and that the tolling contractor retains ownership of, and responsibility for, the hazardous secondary materials generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process.

For purposes of this exclusion, a tolling contractor is a person who arranges for the production of a product or intermediate made from specified unused materials through a written

contract with a toll manufacturer. The toll manufacturer is the person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor. Under the 2008 DSW final rule, the tolling contractor must certify that it has a written contract with the toll manufacturer to manufacture a product or intermediate made from specified unused materials, and that the tolling contractor will reclaim the hazardous secondary materials generated during the manufacture of the product or intermediate. The tolling contractor must also certify that it retains ownership of, and liability for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process at the toll manufacturer's facility. This certification should be made by an official familiar with the terms of the written contract and should be retained at the site of the tolling contractor.

However, there were no requirements to keep records of shipments of hazardous secondary materials sent or received pursuant to the written contract between the tolling contractor and the tolling manufacturer. Since implementation of the final rule, the Agency has received inquiries from regulatory authorities regarding the enforceability of the tolling provision. These authorities believe that it would be easier to determine if tolling contractors and manufacturers were in compliance with the requirements for the tolling exclusion if records were kept of these shipments. The Agency agrees with these suggestions and is therefore proposing to amend 40 CFR 261.4(a)(23)(ii) to add a recordkeeping requirement for tolling contractors and manufacturers.

The proposed language would require the tolling contractor to maintain at its facility for no less than three years records of all hazardous secondary materials received pursuant to the written contract with the tolling manufacturer. It would also require the tolling manufacturer to maintain at its facility for no less than three years records of all hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). EPA solicits comment on whether this proposed requirement would make the exclusion for hazardous secondary materials generated pursuant to a tolling contract easier to enforce. We also solicit comment on other information which would be appropriate for the recordkeeping requirements.

While not specifically raised by regulatory authorities, the same question of enforceability could be raised if a hazardous secondary material is generated and reclaimed at different facilities where both facilities are under the control of the generator. Therefore, EPA also solicits comments on whether the recordkeeping requirement should also apply to hazardous secondary materials reclaimed off-site at the same company under 40 CFR 261.4(a)(23).

Furthermore, the Agency is also soliciting comment on whether the specific tolling exclusion for hazardous secondary materials generated and reclaimed under the control of the generator should be retained or eliminated. We note that since implementation of the 2008 DSW final rule, no facilities have notified that they are operating under the tolling exclusion, which, in any event, applies only to a small subset of generators and reclaimers. The definitions under this exclusion (with its attendant certifications) are complicated and involve applying the exemption to companies other than the original generators and relying on contractual commitments to ensure generator control. If the exclusion is going to be only infrequently utilized, while possibly adding some additional risks of discard, it might be better for both the regulated community and regulatory authorities if it were not part of the exclusions granted to hazardous secondary materials generated and reclaimed under the control of the generator. Instead, persons operating under tolling arrangements would be eligible for the proposed alternative hazardous waste regulations for hazardous recyclable materials transferred to a third-party for reclamation. These proposed alternative regulations are discussed in Section VIII of this preamble. If this approach were finalized, there would be no need for definitions and certifications that are specific to tolling arrangements. On the other hand, the tolling contractor conducting the reclamation might need to obtain a RCRA storage permit. Toll manufacturing can be an efficient method for material production and the Agency does not wish to unnecessarily discourage sustainable reclamation practices under these arrangements. EPA requests comment on the likelihood and extent to which generators expect to rely on toll manufacturing arrangements and on the risks and benefits of including tolling arrangements in our proposed alternative regulatory scheme, or on maintaining their eligibility under the generator-controlled exclusion.

5. Other Changes

The Agency is also proposing a number of structural changes to the regulations in the 2008 DSW final rule in order to make the generator controlled exclusion simpler and easier to understand. In the 2008 DSW final rule, the requirements for non-land-based units operating under the generator-controlled exclusion were found at 40 CFR 261.2(a)(2)(ii), while the requirements for land-based units operating under the same exclusion were found at 40 CFR 261.4(a)(23). Since the requirements for the two types of units are identical, we believe that all the requirements for units operating under the control of the generator should be placed in one regulatory provision. We are therefore proposing to move the requirements listed in 40 CFR 261.2(a)(2)(ii) to 40 CFR 261.4(a)(23). We believe this will provide more clarity and transparency to all users of the regulations.[24]

Another proposed change concerns the definitions of terms applicable to the generator-controlled exclusion. In the 2008 DSW final rule, these definitions (including certification requirements) were found in 40 CFR 260.10. We are proposing today to move these definitions to 40 CFR 261.4(a)(23). We believe that placing all definitions applicable to the generator-controlled exclusion together with the requirements for that exclusion in the same regulatory section will make it easier to locate and understand this exclusion in a single reading.

X. Revisions to the Definition of Legitimacy

A. Summary of Current Definition of Legitimacy

Under the RCRA Subtitle C definition of solid waste, certain hazardous secondary materials, if recycled, are not solid wastes and, therefore, are not subject to RCRA's ''cradle to grave'' management system. The basic idea

[24] In making this change, we are still keeping the definition for land-based operating units since the notification requirement at 40 CFR 260.42 still will request whether or not the unit managing the hazardous secondary material is a land-based operating unit or a non-land-based operating unit.

behind this principle is that recycling of these hazardous secondary materials often closely resembles industrial manufacturing rather than waste management. However, due to the economic incentives for managing hazardous secondary materials outside the RCRA Subtitle C regulatory system, there is a potential for some handlers to claim that they are recycling the hazardous secondary materials when, in fact, they are conducting waste treatment and/or disposal.

To guard against this, EPA has long articulated the need to distinguish between legitimate (*i.e.,* true) recycling and sham recycling, beginning with the preamble to the 1985 regulations that discussed the definition of solid waste (50 FR 638, January 4, 1985) and continuing through the 2008 DSW final rule. The legitimacy provision that is required for the definition of solid waste final exclusions and non-waste determinations promulgated in the 2008 DSW final rule (40 CFR 260.43) is designed to distinguish between real recycling activities—legitimate recycling—and sham recycling, an activity undertaken by an entity to avoid the requirements of managing a hazardous secondary material as a hazardous waste. This provision is substantively the same as the Agency's long-standing policy that has been expressed in our earlier preamble discussions and policy statements. The legitimacy provision applicable to these exclusions and non-waste determinations is based on the 2003 DSW proposal, the 2007 DSW supplemental proposal, the 2008 DSW final rule, and all relevant information available to EPA as contained in the rulemaking record for the 2008 DSW final rule. The preamble to the 2008 DSW final rule contains the operative discussion on the four legitimacy factors that should be used when making legitimate recycling determinations.

In the 2008 DSW final rule, hazardous secondary materials that are not legitimately recycled are discarded materials and, therefore, are solid wastes (40 CFR 260.43). This provision also states that any facility claiming an exclusion at § 261.2(a)(2)(ii), § 261.4(a)(23), § 261.4(a)(24), or § 261.4(a)(25) or using a non-waste determination at § 260.30(d) or (e) must be able to demonstrate that its recycling activity is legitimate.

The structure of the legitimacy standard in the 2008 DSW final rule has two parts. The first part includes a requirement that hazardous secondary materials being recycled must provide a useful contribution to the recycling process or to the product of the recycling process and a requirement that the product of the recycling process is valuable. These two factors make up the core of legitimacy and, therefore, a process that does not conform to them cannot be a legitimate recycling process, but would be considered sham recycling.

The second part of legitimacy in the 2008 DSW final rule includes two factors that must be considered, but not necessarily met, when a recycler is making a legitimacy determination. That is, EPA believed that these two factors that must be considered when making a legitimacy determination did not always need to be met. This was because the Agency is aware of a few situations in which a legitimate recycling process does not conform to one or both of these two factors, yet the reclamation activity would still be considered legitimate.

EPA did not believe that this will be a common occurrence, but in recognition that legitimate recycling may still occur in these situations, EPA promulgated the factors that address the management of the hazardous secondary materials and the presence of hazardous constituents in the product of the recycling process as factors that must be considered in the overall legitimacy determination, but not factors that must always be met.

Following is a summary of the four legitimacy factors that were codified in the 2008 DSW final rule. The preamble to the 2008 DSW final rule includes a lengthy discussion of the four legitimacy factors that is the operative discussion for making legitimate recycling determinations (73 FR 64700, October 30, 2008).

Summary of the Four Factors in the 2008 DSW Final Rule

Factor 1—Useful Contribution: ''Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product of the recycling process * * * The hazardous secondary material provides a useful contribution if it (i) contributes valuable ingredients to a product or intermediate; or (ii) replaces a catalyst or carrier in the recycling process; or (iii) is the source of a valuable constituent recovered in the recycling process; or (iv) is recovered or regenerated by the recycling process; or (v) is used as an effective substitute for a commercial product'' (40 CFR 260.43(b)(1)).

This factor expresses the principle that hazardous secondary materials should contribute value to the recycling process. This factor is an essential element to legitimate recycling because real recycling is not occurring if the hazardous secondary materials being added or recovered do not add anything to the process or recycled product. This factor is intended to prevent the practice of adding hazardous secondary materials to a manufacturing operation simply as a means of disposing of them, or of recovering only small amounts of a constituent, both of which EPA would consider sham recycling. For hazardous secondary materials to meet this factor, not every constituent or component of the hazardous secondary material has to make a contribution to the recycling activity. For example, a legitimate recycling operation involving precious metals might not recover all of the components of the hazardous secondary material, but would recover precious metals with sufficient value to consider the recycling process legitimate. In addition, the recycling activity does not have to involve the hazardous component of the hazardous secondary materials if the value of the contribution of the non-hazardous component justifies the recycling activity.

Factor 2—Valuable Product or Intermediate: ''The recycling process must produce a valuable product or intermediate * * * The product or intermediate is valuable if it is (i) sold to a third-party or (ii) used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process'' (40 CFR 260.43(b)(2)).

This factor expresses the principle that the product or intermediate of the recycling process should be a material of value, either to a third party who buys it from the recycler, or to the generator or recycler itself, who can use it as a substitute for another material that it would otherwise have to buy or obtain for its industrial process. This factor is an essential element of the concept of legitimate recycling because recycling cannot be occurring if the product or intermediate of the recycling process is not of use to anyone and, therefore, is not a real product. This factor is intended to prevent the practice of running hazardous secondary materials through an industrial process for the purpose of avoiding the costs of hazardous waste management, rather than for the purpose of using the product or intermediate of the recycling activity. Such a practice would be sham recycling.

Factor 3—Managed as a Valuable Commodity: ''The generator and the recycler should manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material should be managed,

at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the hazardous secondary material should be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded'' (40 CFR 260.43(c)(1)).

This factor expresses the principle that hazardous secondary materials being recycled should be managed in the same manner as other valuable materials. This factor requires those making a legitimacy determination to look at how the hazardous secondary materials are managed before they enter the recycling process. In EPA's view, a recycler will value hazardous secondary materials that provide an important contribution to its process or product and, therefore, will manage those hazardous secondary materials in a manner consistent with how it manages a valuable feedstock. If, on the other hand, the recycler does not manage the hazardous secondary materials as it would a valuable feedstock, that behavior may indicate that the hazardous secondary materials may not be recycled, but rather will be released into the environment and discarded.

Factor 4—Comparison of Toxics in the Product: ''The product of the recycling process does not (i) contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or (ii) contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or (iii) exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit'' (40 CFR 260.43(c)(2)).

This factor expresses the principle that when making a legitimacy determination, one needs to look at the concentrations of the hazardous constituents found in the product made from the hazardous secondary materials and compare them to the concentrations of hazardous constituents in analogous products that were not made from hazardous secondary materials. Any of the following three situations could be an indicator of sham recycling: A product that contains significant levels of hazardous constituents that are not found in the analogous products; a product with significantly higher levels of hazardous constituents than were in the analogous products; or a product that exhibits a hazardous characteristic that analogous products do not exhibit.

Any of these situations could indicate that sham recycling is occurring because in lieu of proper hazardous waste disposal, the recycler could have incorporated hazardous constituents into the final product when they are not needed to make the product effective for its purpose. This factor, therefore, is designed to determine when toxics that are ''along for the ride'' are discarded in a final product and, therefore, the hazardous secondary materials are not being legitimately recycled. Evaluating the significance of levels of hazardous constituents in products of the recycling process may involve taking into consideration several variables, such as the type of product, how it is used and by whom, whether or not the elevated levels of hazardous constituents compromise the efficacy of the product, the availability of the hazardous constituents to the environment, and others.

In addition to promulgating the legitimate recycling provision in the 2008 DSW final rule, EPA included a discussion of how the current legitimacy policy continues to apply to existing recycling exclusions and how the four factors included in the legitimacy provision at 40 CFR 260.43 are substantively the same as the current legitimacy policy. The Agency included a lengthy discussion of how it developed the legitimacy factors in 40 CFR 260.43 by closely examining the questions and sub-questions in its long-standing policy memo on the subject, OSWER Directive 9441.1989(19) (April 26, 1989), also known as the Lowrance Memo, and in the relevant **Federal Register** preambles, and converting this policy guidance into four direct factors. The detailed explanations of how each of the four factors is derived from the Lowrance Memo and other existing policy statements can be found at 73 FR 64708–64710, October 30, 2008.

B. Proposed Changes to the Definition of Legitimacy

1. Legitimacy Codified for all Recycling

In today's action, EPA is proposing to codify the legitimate recycling requirement for all hazardous secondary materials recycling.[25] In the October 28, 2003, proposal at 68 FR 61581–61588, EPA discussed its position on the relevance of legitimacy to hazardous secondary materials recycling in general and to the redefinition of solid waste specifically. At that time, we proposed to codify in the RCRA hazardous waste regulations four general criteria to be used in determining whether recycling of hazardous secondary materials is legitimate. In the supplemental proposal of March 26, 2007, at 72 FR 14197–14201, we proposed two changes to the 2003 proposed legitimacy criteria and asked for public comment on those changes. The changes were (1) a restructuring of the proposed criteria, called ''factors'' in that proposal, to make two of them mandatory, while leaving the other two as factors to be considered, and (2) additional guidance on how the economics of the recycling activity should be considered in a legitimate recycling determination.

EPA's 2008 DSW final rule codified legitimacy for the recycling covered by the exclusions and non-waste determinations in that rulemaking. However, at that time, EPA did not codify the legitimacy factors for other recycling exclusions/activities, but explained that the concept of legitimacy finalized in that rule as a restriction or a condition for the final exclusions and the non-waste determinations is not substantively different from the Agency's longstanding policy that has been expressed in our earlier preamble discussions and policy statements.

Upon further consideration of legitimacy, EPA believes that codifying the legitimacy factors for all recycling would provide a number of benefits. These benefits include ensuring that this important requirement is more readily accessible to the public, including the regulated community, by being published in the **Federal Register** and in the Code of Federal Regulations. EPA also expects that this action will prevent or minimize fraudulent or sham recycling, which will make the legitimacy provision a more enforceable standard for states and other entities implementing RCRA. In the Regulatory Impact Analysis for this proposed rule, we estimate that 5,321 facilities are currently recycling hazardous secondary materials in the U.S. For these facilities, this requirement that is currently implicit in the regulations and described in guidance would become an explicit regulatory requirement.

a. *What is the proposed scope of the legitimacy provision?* If codified for all recycling, the definition of legitimacy would apply to these types of hazardous secondary materials, in addition to the final exclusions and non-waste determinations promulgated in the 2008 DSW final rule:

- Hazardous recyclable materials that are managed under today's proposed alternative Subtitle C regulations for hazardous recyclable materials.

[25] This legitimate recycling requirement does not apply to non-hazardous secondary materials. For information on the legitimacy requirement for those materials, see the Identification of Non-Hazardous Secondary Materials that Are Solid Waste Final Rule (76 FR 15456, March 21, 2011).

• Hazardous secondary materials that, because they are recycled, are excluded or exempted from Subtitle C regulation under other regulatory provisions (*e.g.,* see the exclusions from the definition of solid waste in 40 CFR 261.4(a)).

• Materials formally determined to be non-wastes under the procedures in 40 CFR 260.34.

• Recyclable hazardous wastes that are regulated under Subtitle C prior to recycling or subject to reduced regulation.

The concept of legitimate recycling is also used to determine if a unit is a recycling unit exempt from RCRA Subtitle C permitting or is a regulated waste treatment or storage unit subject to full RCRA Subtitle C permitting.[26] If finalized for all recycling, the legitimacy factors would apply to these situations as well.

One important note is that EPA has previously examined in depth a number of waste-specific and industry-specific recycling activities and has promulgated specific regulatory exclusions or provisions that address the legitimacy of these practices in much more specific terms than the general factors being promulgated today. Thus, there would be situations where today's proposed broadly applicable factors would overlap with these more specific legitimacy provisions.

One example is the regulation for zinc fertilizers made from recycled hazardous secondary materials. In the zinc fertilizer regulation, among the requirements established by EPA are specific numerical limits on five heavy metal contaminants and dioxins in the zinc fertilizer product exclusion at 40 CFR 261.4(a)(21). These limits would be the ''comparable'' standard for those contaminants when determining if the recycling meets legitimacy factor 4 (Comparison of Toxics in the Product). However, if fertilizer made from hazardous secondary materials contains other hazardous constituents that do not have specific numerical limits in 40 CFR 261.4(a)(21), then the generator or recycler would need to compare the levels of those hazardous constituents with those in an analogous fertilizer product not made from hazardous secondary materials. Other examples of more specific legitimacy provisions are found in the regulations for comparable fuels at § 261.38, the use constituting disposal provisions in part 266 subpart C, and the burning for energy recovery and material recovery provisions in part 266 subpart H.

In doing a legitimacy determination on a fuel made from hazardous secondary material under the comparable fuels exclusion, the regulations contain concentration limits for a comprehensive list of chemicals. If the fuel meets those limits, it would generally meet legitimacy factor 4 (unless it contains a hazardous constituent that is not on the list of chemicals in § 261.38 Table 1). However, the regulated entity would need to consider the other legitimacy factors as well in making an overall legitimacy determination on the hazardous secondary material being burned as a comparable fuel.

For hazardous secondary materials being used in a manner constituting disposal under 40 CFR part 266 subpart C, a person would need to determine if the hazardous secondary material being recycled in this way meets all four legitimacy factors in 40 CFR 260.43, in addition to meeting the conditions of 40 CFR part 266 subpart C. Meeting the applicable treatment standards as required by § 266.20 would not substitute for meeting legitimacy factor 4 because those standards are technologically-based standards and are not based on a comparison to an analogous product. Those standards in some cases would be more stringent while in other cases, they may be less stringent.

The legitimacy provisions would also apply to hazardous secondary materials being burned either for energy recovery or material recovery under 40 CFR part 266 subpart H. For those materials being burned for metals recovery, meeting the concentration limits in 40 CFR 266.100(d)(2) would be considered comparable for the sake of legitimacy factor 4. The regulated entity would have to ensure that the recycling meets the other legitimacy factors as well to be in compliance with the overall legitimate recycling provision.

EPA is proposing that these more specific provisions remain applicable and that the legitimacy factors would not replace them. That is, regulated entities would need to comply with both the specific regulatory conditions of their recycling exclusions, as well as any of the legitimate recycling factors not explicitly covered by the specific recycling exclusion. The Agency seeks public comment on the overlap between the general legitimacy provision and the specific recycling exclusions.

b. *Why is EPA proposing to codify legitimacy for all recycling?* In the 2008 DSW final rule, EPA explained that it was finalizing codified legitimacy factors only for the exclusions and non-waste determinations in that rule to avoid confusion among the regulated community and state and other implementing regulatory agencies about the status of recycling under existing exclusions. At the time, EPA did not expect members of the regulated community to revisit their previously-made legitimacy determinations.

After evaluating the comments in response to the May 27, 2009, public meeting notice (74 FR 25200) and concerns brought up in the subsequent public meetings, EPA has determined that the benefits from having identical codified legitimacy requirements outweigh concerns about making administrative changes to the requirement. One codified legitimacy standard will be less confusing and more clear to the regulated community, implementing agencies and the public.

EPA's environmental problems study documents a number of recycling damage cases that have resulted from sham recycling. For example, several cases of sham recycling detail cases of lead- and other metal-contaminated materials from secondary lead smelters and battery recyclers being used as fill in residential neighborhoods and as play sand for children.[27] These are clear cases of sham recycling, but can be difficult for states and other implementing agencies to enforce against because the requirement is not in the regulations. EPA believes that including legitimacy in the regulations for all recycling will make it easier to enforce these sham recycling cases and will help implementing agencies fulfill their mandate to protect human health and the environment.

EPA also believes that there will be benefits to the environment from requiring those who are recycling under existing exclusions and other provisions to do this kind of evaluation of their recycling process with legitimacy considerations in mind. EPA believes that codifying the legitimacy factors for all recycling and the requirement to document legitimacy determinations, as discussed below, will result in more thorough, accurate and consistent legitimacy determinations. However, as we discuss below, documentation of the legitimacy determination (*i.e.,* how the hazardous secondary material meets the legitimacy factors) needs only to be available from the effective date of this rule.

EPA continues to believe that the four legitimacy factors we are proposing to codify for all recycling are substantively

[26] Certain exempt legitimate recycling facilities are still subject to RCRA air emission standards.

[27] U.S. EPA, *An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials,* Appendix 2, EPA–HQ–RCRA–2002–0031–0358, Appendix 2, pp. 3–4, 238, 294–295, 298–299.

the same as the existing policy found in previous **Federal Register** preamble statements and its long-standing policy memo on the subject (*i.e.,* the Lowrance Memo). An analysis that shows how the four factors are derived from and equivalent to the Lowrance Memo and other policy statements is in the 2008 DSW final rule preamble (73 FR 64708–64710). In addition, EPA continues to believe that the vast majority of recycling of hazardous secondary materials in the regulated community is currently legitimate and would already meet all four legitimacy factors.

It is the Agency's belief that it is an advantage for the regulatory agencies to have the regulatory requirements for legitimacy be identical for all recycling processes and to have the legitimacy provision promulgated in the regulations. Because legitimacy is an inherent concept underlying all of the current recycling exclusions, the legitimate recycling standard already applies to all hazardous secondary materials recycling and hazardous waste recycling, whether such recycling remains under the hazardous waste regulations or is excluded from the definition of solid waste. Therefore, the change being proposed today would result in the details of an existing standard being added to the regulations and thereby being more publicly available.

It has been our long-standing policy and it is well understood throughout the regulated community and the implementing state regulatory agencies that recycling must be legitimate. EPA firmly believes that the legitimacy factors are a simplification and clarification of this existing policy and, as such, the large majority of existing determinations should not change or need to be revisited. We are reiterating today that simply codifying the legitimacy standard is not changing the underlying principles of legitimate recycling that have existed since the basic RCRA DSW structure was put in place in 1985.

We recognize that under some of the existing exclusions, certain conditions may fulfill certain legitimacy factors or considerations, but this is not universally the case for all of the recycling exclusions. Even under the existing exclusions, there remains the possibility of someone claiming an existing recycling exclusion as a means of discarding their hazardous waste. Thus, simply meeting the conditions of an exclusion does not automatically ensure that the recycling is legitimate and codifying the legitimacy factors for all recycling emphasizes this fact. The codified legitimacy factors would apply to all future recycling of hazardous secondary materials as well, unless we establish specific legitimacy conditions for a specific recycling practice that stand in for the more general factors.

EPA is asking for comments on this proposed approach to the legitimate recycling requirement. EPA is particularly interested in examples of cases where it would not be appropriate for the legitimacy factors to be codified.

2. All Legitimacy Factors Being Mandatory

a. *What structure is EPA proposing for the legitimacy factors?* In this proposed rule, EPA is reconsidering the current legitimacy structure and proposing that all the legitimacy factors be mandatory. EPA is proposing also that a petition process be available if a legitimate recycling process can be shown to be legitimate even though it does not meet one or both of the factors that currently have to be considered.

As stated above, in the 2008 DSW final rule, EPA finalized a structure for legitimacy that included two factors that had to be met and two factors that had to be considered, but not necessarily met. We stated that we thought this approach would be clearer than the guidance for legitimacy being followed at that time, but would still provide some flexibility in those cases where recycling did not meet all the legitimacy factors, but the recycling activity was still legitimate.

In this proposal, EPA is reconsidering its position on this issue and now believes that it would be most appropriate for all legitimacy factors to be mandatory, with a petition process for those cases where the recycling process is legitimate, even though factor 3 or factor 4 or both are not met. EPA is proposing this administrative change in the structure of the legitimacy factors for several reasons. Comments in response to EPA's May 27, 2009, notice of a public meeting and comments provided at that public meeting on June 30, 2009, reiterated that most of the state agencies that would be responsible for implementing the DSW regulations when the state has adopted the program support an approach in which all legitimacy factors are mandatory. EPA also expects that making all of the legitimacy factors mandatory would be less complicated across the overall RCRA Subtitle C program and would improve both the effectiveness and the protectiveness of the legitimacy provision.

Commenters also argued that the legitimacy provision does not effectively address EPA's expectation that most recycling should meet all four legitimacy factors and leaves too much leeway for potential sham operations. A structure with four mandatory factors and a petition process for an entity that believes that its recycling is legitimate despite not meeting factor 3 or factor 4 or both does convey EPA's belief that these exceptions to the legitimacy factors are rare.

In addition, EPA had believed that the two mandatory factors and two factors to be considered would be protective of human health and the environment because, under the regulations in 40 CFR 260.43, exceptions to all four factors being met would only happen in cases of recycling that was legitimate anyway—that is, cases where either factor 3 or factor 4 were not met would have to have valid reasons for still being legitimate. However, it is not clear that this result will always occur in practice. Continued confusion about how the regulations work and concerns from state agencies that are and will be responsible for the enforcement and implementation of this provision are making EPA revisit its previous decision that this structure would be protective.

Specifically, in the design of the legitimacy provision in the 2008 DSW final rule, EPA did not intend to make it possible for materials going for reclamation to be mismanaged or to allow recycled products that could pose a risk into the market. EPA heard in further comments, however, that states and implementing agencies remained concerned that the structure of the factors would lead to these outcomes. These comments about the protectiveness of the legitimacy structure received from those regulators during actual implementation of the 2008 DSW final rule are one of the main reasons that EPA is rethinking its approach.

EPA continues to believe that the majority of recycling currently taking place would meet all legitimacy factors, but recognizes that there may be instances where recycling may be legitimate, but not meet one or both of the two factors that were labeled ''to be considered'' in the 2008 DSW final rule. It is critical that the legitimacy regulations be flexible enough to allow for these situations, particularly if the regulations are going to apply to all recycling. Therefore, EPA is proposing a petition process for facilities that believe that their recycling processes are legitimate despite not meeting one or both of these two final factors. EPA's proposal for how this petition process would work is described later in this section.

Comments in response to the May 27, 2009, **Federal Register** notice also

demonstrated that despite EPA's efforts to clarify what it meant by ''factors to be considered'' and how the Agency thought that structure would work in implementation of legitimacy, many commenters still found the requirement confusing and believed the regulated community as a whole would be confused as well. EPA believes that a structure where all factors must be met with a petition process for any exceptions would be more straightforward than the current two mandatory factors with two factors that have to be considered.

EPA notes that the ultimate determination of legitimacy would be the same under either approach (*i.e.,* whether factors 3 and 4 ''must be considered'' or ''must be met''). Under the current structure requiring the factors be considered, a person making a legitimacy determination regarding a recycling process that does not meet one or both of these factors (*i.e.,* is not being managed as a valuable commodity or has elevated levels of hazardous constituents in the product) would need a strong reason for why the recycling is still legitimate and, in the case of an enforcement action, would be required to demonstrate that reason. Under the proposed restructuring of the factors, under the same scenario, the recycler would be required to demonstrate legitimacy up front as part of a petition process and receive EPA approval before claiming an exemption. In other words, there would be no substantive distinction between the final legitimacy determination under the two approaches, but the administrative process for making that determination would be different.

One potential concern with the proposed new structure is that it will require all entities making a legitimacy determination to reassess whether they meet all four factors and, if a facility's recycling does not meet factor 3 or factor 4 or both, it would either have to reengineer the process or submit a petition for a legitimacy variance. However, under the revisions being proposed today, all recyclers of hazardous secondary materials would be required to consider the legitimacy of their recycling in order to document that their recycling is legitimate for their files. Therefore, under EPA's proposal, the only burden on top of that requirement would be in the instance where a facility would need to submit a petition of a legitimacy variance.

Finally, in designing the legitimacy factors that apply throughout the RCRA program, particularly in the various parts of the definition of solid waste, EPA is striving for consistency and cohesiveness. EPA's recent Identification of Non-Hazardous Secondary Materials that are Solid Wastes final rule (76 FR 15456, March 21, 2011) includes legitimacy factors for non-hazardous secondary materials that are burned in combustion units as fuels or used as ingredients. Despite the differences in the circumstances covered by that rule and this proposed rule, the legitimacy concepts are similar. EPA's non-hazardous secondary material rule mandates that all legitimacy factors must be met and in proposing to alter the legitimacy factors for hazardous secondary materials, EPA is proposing to line up these concepts in a consistent manner.

b. *Petition process for legitimacy.* As stated above, EPA believes it is critical that the legitimacy requirement have flexibility for those situations where a facility is recycling legitimately, but is not meeting factor 3 and/or factor 4. The petition process being proposed would be a mechanism for that flexibility, while also allowing the implementing agency to review the site-specific nature of the recycling practice and ensure that it is legitimate. EPA is seeking comment on the various aspects of this proposed process. EPA believes that the situations that would warrant legitimacy variances are rare, but seeks comment again on specific recycling scenarios that are legitimate yet do not meet either legitimacy factor 3 and/or legitimacy factor 4.

Commenters to the 2007 DSW supplemental proposal suggested the idea of a petition process with four mandatory factors. EPA considered this option for the 2008 DSW final rule, but did not finalize it. However, after determining that an approach to legitimacy with all four factors being mandatory may be most appropriate, EPA is returning to the idea of a petition process to provide the needed flexibility and oversight to legitimacy determinations.

Information To Be Included in the Petition

Of primary interest, the petition would need to include information on the hazardous secondary material being recycled and the recycling process itself in the context of the four legitimacy factors. EPA continues to believe that legitimacy factors 1 and 2—which state that the material being recycled has to provide a useful contribution to the recycling product or process and that the process must produce a valuable product or intermediate—have to be met for recycling to be considered legitimate. A facility would be eligible to submit a petition for a legitimacy variance to its implementing agency under § 260.43(c) if it has met legitimacy factors 1 and 2, but for some reason does not meet either factor 3, the requirement that the hazardous secondary material is managed as a valuable commodity, or factor 4, the requirement that the levels of any contaminants in the product of the recycling process be comparable to or lower than an analogous product or both.[28]

Thus, the legitimacy variance petition would include a narrative description of how the facility's recycling process addresses each of the four legitimacy factors. For the factor or factors that the process does not meet, the petition would have to explain how the recycling process does not meet the factor(s), but why the recycling should nevertheless be determined to be legitimate.If, for example, the recycling process does not meet factor 3, the petition would include an in-depth description of how the hazardous secondary materials are managed and stored on-site and how analogous raw materials, if there are any, are stored on-site, as well as an explanation for why the storage of the hazardous secondary materials is different yet still indicative of management as a valuable product or intermediate. It may be appropriate to include photos or engineering specifications to illustrate the nature of the material storage. As described below, the Agency is also proposing to modify the language of this factor slightly to allow for situations where the hazardous secondary material is stored in a way that is different from the analogous raw material, but is stored in a manner equally protective. We are proposing that in those situations, a person would not have to petition for a legitimacy variance simply because the storage method was different than how the analogous raw material was stored.

For a recycling process that does not meet factor 4 because the levels of contaminants in the product of the recycling process are not comparable to or lower than the levels in an analogous product, the petition should include a description of the product and its uses and an explanation of why the recycling is legitimate despite the elevated contaminant levels from the hazardous secondary material. This explanation could include considerations such as the lack of plausible exposure pathways to humans and the environment from the product, the bioavailability of the toxics in the product, or other factors, as

[28] EPA is proposing to amend legitimacy factors 3 and 4 in this proposal. These are discussed below in X.B.3. and X.B.4.

appropriate. It may also be appropriate in this section to include relevant product specifications, either from the specific facility or industry-wide, as well as results from any toxicity testing of the product of the recycling process.

In the 2008 DSW final rule, EPA gave the following example of where recycling could still be considered legitimate, even though the contaminant levels could be considered significantly higher than an analogous product. The example of the reuse of lead contaminated foundry sands may or may not be legitimate, depending on the use. The use and reuse of foundry sands for mold making in a facility's sand loop using a non-thermal reclamation process under normal industry practices has been found to be legitimate because the sand is part of an industrial process where there is little chance of the hazardous constituents being released into the environment or causing damage to human health and the environment when it is kept inside, because there is lead throughout the foundry's process, and because there is a clear value to reusing the sand. However, in the case of lead contaminated foundry sand used as children's play sand, the same high levels of lead would disqualify this use from being considered legitimate recycling. In fact, the Agency is considering codifying the determination that the reuse of foundry sands for mold making in a foundry's sand loop using a non-thermal reclamation process is legitimate recycling and thus, these facilities would not need to submit a legitimacy variance petition since the Agency has already examined the practice and determined it is legitimate recycling. The Agency requests comment on this and on whether there are other similar cases where existing legitimacy determinations should be codified.

In addition, the facility submitting a petition would also be required to include in its petition a detailed description of its process and its hazardous secondary materials, including, where applicable, material flow charts or diagrams, or other information the implementing agency may request. Because of the case-by-case nature of legitimacy determinations, the implementing agency reviewing the petition will need this detailed information to make an accurate assessment of the legitimacy of the process.

Process for Evaluating the Petition

EPA is proposing that this petition process be managed by the state agencies where a state implements the RCRA Subtitle C program. In states where EPA implements Subtitle C, the petition process would be run by the appropriate EPA Regional office.

EPA is proposing that in responding to a legitimacy variance petition, the implementing agency would follow the same procedures already in place for variances from solid waste, variances to be classified as a boiler, and for non-waste determinations in § 260.33. After evaluating the petition for a legitimacy variance and, if necessary, visiting the requesting facility, the implementing agency would issue a draft notice tentatively granting or denying the application. Notification of the tentative decision would be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located and be made available on EPA's Web site. The implementing agency would then accept comment on the tentative decision for at least 30 days and may also hold a public hearing. The implementing agency would issue its final decision after receipt of comments and after any public meetings.

Upon receiving a legitimacy variance, EPA is proposing that the facility include this information in the appropriate place of the RCRA Site ID Form (EPA Form 8700–12). EPA is proposing to revise this form to provide a place to check that a legitimacy variance has been received. The variance would not expire as long as the conditions relevant to the legitimacy variance described in the original petition do not change. The facility would be required to confirm that its process has not changed by re-notifying every two years, also through the RCRA Site ID Form. The facility should keep records of its legitimacy variance as part of its legitimacy documentation.

EPA is seeking comment on the legitimacy petition process as proposed here and how the design of this process would work for both implementing agencies and facilities that may have to submit such a petition. In addition, EPA is seeking information on how many facilities may have to submit legitimacy petitions under this proposed requirement.

3. Proposed New Language for Legitimacy Factor 3 (Managed as a Valuable Commodity)

The 2008 DSW final rule codified four factors as part of the § 260.43 definition of legitimacy, as summarized above. Factor 3 addressed the management of the hazardous secondary materials before it is recycled. Specifically, the regulatory language for this factor reads as follows:

> ''The generator and the recycler should manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material should be managed, at a minimum, in a manner consistent with the management of the raw material. Where there is no analogous raw material, the hazardous secondary material should be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.''

In making all legitimacy factors mandatory, the first sentence of the regulatory language would be revised to read as follows: ''The generator and the recycler must manage the hazardous secondary material as a valuable commodity.'' In addition, the Agency is proposing that the language following that sentence be changed to the following to more closely reflect the intent of the provision: ''Where there is an analogous raw material, the hazardous secondary material, must be managed, at a minimum, in a manner consistent with the management of the raw material *or in an equally protective manner.''* Thus, a generator or recycler would not have to submit a petition for a legitimacy variance if their hazardous secondary material is stored in a different manner than the analogous raw material, as long as that storage was as protective as the way the analogous raw material was stored. For example, a hazardous secondary material in powder form that is shipped in a woven super sack in good condition (*i.e.,* that does not leak or spill) and stored in an indoor containment area would be considered managed ''in an equally protective manner'' as an analogous raw material that is shipped and stored in drums.

The entire new proposed paragraph at 40 CFR 260.43(a)(3) would read as follows: ''The generator and the recycler must manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.''

In addition, EPA would like to clarify that managing a hazardous secondary material in a manner consistent with the management of an analogous raw material can include situations where the raw material and the hazardous secondary material (*e.g.,* scrap metal) are both stored on the ground.

EPA requests comment on these changes to the language in factor 3.

4. Proposed New Language for Legitimacy Factor 4 (Comparison of Toxics in the Product)

The 2008 DSW final rule codified four factors as part of the § 260.43 definition of legitimacy, as summarized above. Factor 4 addressed the issue of toxics along for the ride in the products made from hazardous secondary materials. Specifically, the factor found at 40 CFR 260.43(c)(2) specifies that the product of the recycling process does not (1) contain significant concentrations of any hazardous constituents found in Appendix VIII of part 261 that are not found in analogous products; or (2) contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are significantly elevated from those found in analogous products; or (3) exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

The agency is proposing to change the wording within the regulatory language of this legitimacy factor from ''significant'' and ''significantly elevated'' to ''comparable to or lower than'' because it more clearly reflects the intent of this factor. The agency believes ''comparable to or lower than'' means that any contaminants present in the product made from hazardous secondary materials are within a small acceptable range. In making this change, we also are simplifying the regulatory text by combining subparagraphs (i) and (ii) since it is no longer necessary to separate those instances where the hazardous constituents are or are not present in the analogous product. This language is also consistent with the Identification of Non-Hazardous Secondary Materials that are Solid Wastes final rule (76 FR 15456, March 21, 2011). However, we are not changing the basic meaning of this factor. Operationally, the terms ''comparable'' and ''not significant'' or ''not significantly elevated'' are the same for hazardous secondary materials recycling and the examples the Agency provided in the 2008 DSW final rule preamble that explained how the Agency envisions this factor working are still appropriate. Those examples are repeated here.

For example, if paint made from reclaimed solvent contains significant amounts of cadmium, but the same type of paint made from virgin raw materials does not contain cadmium, it could indicate that the cadmium serves no useful purpose and is being passed though the recycling process and discarded in the product. Thus, the levels of cadmium would not be considered ''comparable'' and the paint would fail this legitimacy factor.

In a second example, if a lead-bearing hazardous secondary material was reclaimed and then that material was used as an ingredient in making ceramic tiles and the amount of lead in the tiles was significantly higher than the amount of lead found in similar tiles made from virgin raw materials, the recycler should look more closely at the factors to determine the overall legitimacy of the process. The significantly higher levels of lead would indicate that the recycled product is not comparable to an analogous product and, thus, the recycling process is really a sham.

Another example is if zinc galvanizing metal made from hazardous secondary materials that were reclaimed contains 500 parts per million (ppm) of lead, while the same zinc product made from raw materials typically contains 475 ppm. These levels would be considered comparable since they are within a ''small acceptable range'' and, thus, the product would meet this factor. If, on the other hand, the lead levels in the zinc product made from reclaimed hazardous secondary materials were considerably higher, these levels may not be comparable, and would require the recycler to look more closely at this factor since it may indicate that the product was being used to illegally dispose of the lead and that the activity is sham recycling, unless the recycler submits a petition and receives a determination from the implementing agency that other factors demonstrate otherwise and the recycling activity is determined to be legitimate.

In another example, if a ''virgin'' solvent contains no detectable amounts of barium, while spent solvent that has been reclaimed contains a minimal amount of barium (*e.g.,* 1 ppm), this difference would likely be considered comparable.

The new proposed language for 40 CFR 260.43(a)(4) would specify that the product of the recycling process (1) must contain concentrations of any hazardous constituents found in Appendix VIII of part 261 at levels that are comparable to or lower than those found in analogous products and (2) must not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

EPA requests comment on these changes to the language in factor 4 and specifically, whether any commenters have examples of where this change in language would change the outcome of the legitimacy determination. If EPA were to receive specific information on numerous cases where the product of hazardous secondary material recycling had levels of hazardous constituents that were not comparable to those found in products made from raw materials, but the Agency still considered the recycling to be legitimate, such information would be important in EPA's final decision about whether factor 4 should be mandatory or should remain a factor ''to be considered.''

In addition, EPA requests comment on whether it would be helpful for the Agency to develop additional guidance on what constitutes ''comparable'' levels of hazardous constituents for certain products of hazardous secondary materials reclamation. For most types of hazardous secondary materials reclamation, EPA does not believe that additional guidance would be needed. For example, the three most common types of hazardous secondary materials reclamation—solvents recovery, metals recovery, and acid regeneration— are expected to result in recycled products that are easily compared to their non-recycled counterparts. This is because it is EPA's understanding that the products of solvents recovery, metals recovery, and acid regeneration are generally indistinguishable from products made from raw materials. Users and recyclers of these common industrial materials are very familiar with the formulations of these commercial products and can easily identify whether there are hazardous constituents at elevated levels beyond what is typically found in these products. This could be informed by product specifications, where such specifications are available for the hazardous constituents. However, there may be some types of products from recycled hazardous secondary materials which are less common or more unusual for which guidance might be useful. EPA requests comment on whether such guidance would be useful and, if so, for which specific products made from hazardous secondary materials, and encourages commenters to submit data or identify which sources of data could be used to develop such guidance.

Commenters should also provide views, and related data, on what parameters may be used to characterize ''comparable levels'' for classes of hazardous secondary materials. EPA requests the data for specific hazardous secondary materials, including identification of the industrial process, industrial sector, and the specific use for the hazardous secondary material.

5. Documentation of Legitimacy

When the Agency codified the legitimacy standard in the 2008 DSW final rule, we did not require specific documentation regarding the legitimacy determination, although the regulatory language stated that persons claiming to be excluded from hazardous waste regulation because they are engaged in reclamation must be able to demonstrate that the recycling is legitimate. Specifically, 40 CFR 260.43 states that any facility claiming an exclusion at § 261.2(a)(2)(ii), § 261.4(a)(23), § 261.4(a)(24), or § 261.4(a)(25) or using a non-waste determination at § 260.30(d) or (e) must be able to demonstrate that its recycling activity is legitimate.

Although there was no specific recordkeeping requirement that went along with the ability to demonstrate legitimacy in the 2008 DSW final rule, EPA stated that we expected that in the event of an inspection or an enforcement action by an implementing agency, the recycler would be able to show how it made the overall legitimacy determination per § 261.2(f). Section 261.2(f) requires persons claiming that materials are not solid waste or are conditionally exempt from RCRA Subtitle C regulation to provide appropriate documentation of these claims. Under the 2008 DSW final rule, when a recycling process does not conform to one or both of the two non-mandatory factors under § 260.43(c), the Agency would expect the facility to show that it considered the factor(s) and why the recycling activity overall remains legitimate. Although § 261.2(f) will still apply in enforcement actions, we have since decided that it would be most useful to implementing agencies if the information documenting a recycling activity as legitimate was assembled in advance and available at all times.

After implementing the DSW exclusions in several states since its promulgation in 2008, we have determined that documentation of legitimacy is an important step in ensuring compliance with this provision and will make oversight and enforcement more effective. We are therefore proposing today to require that persons who perform the recycling include documentation in their paperwork to explain how their hazardous secondary materials are legitimately recycled. We generally expect that this documentation would be a narrative description, which could include photographs or other illustrations of how the recycling of their hazardous secondary materials meets all four factors of legitimate recycling. All recyclers of hazardous secondary materials would need to maintain this documentation on site where the recycling occurs for the duration of the recycling operations and for three years after the recycling operations cease. If the recycling occurs on-site at a generator's facility rather than at the recycler's facility, then the documentation would be maintained at the generator's facility.

Written documentation would provide an easily-available explanation of the facility's rationale for the legitimacy of its process that is available to the implementing agency on regular inspections or as part of compliance assistance. In addition, generators sending materials to third-party recyclers could also ask for a copy of the recycler's legitimacy documentation to ensure that their materials are going to legitimate recycling.

This provision would require that persons claiming that their recycling activity is legitimate have the burden to provide written documentation showing how the hazardous secondary materials provide a useful contribution to the recycling process, how the product of the recycling activity—whether it is a product or process intermediate—is valuable, how the generator or the recycler manages the hazardous secondary materials as a valuable commodity, and how the levels of any hazardous constituents in the product made from hazardous secondary materials are comparable to or lower than those in analogous products made from virgin materials. If the hazardous secondary material recycler determines that one or both of the latter two factors were not met, it would need to produce documentation that it has petitioned the implementing agency for a legitimacy variance, as described above, and received a determination that the recycling was indeed legitimate, even though one or both of those factors were not met.

The Agency is not proposing any specific format for the documentation of legitimacy; however, we expect that the recycler would have written documentation describing the recycling process and how it meets each legitimacy factor. For example:

- Useful contribution legitimacy factor—the recycler would document how the hazardous secondary materials provide a useful contribution to the recycling process or to the product or intermediate of the recycling process. The regulatory text for this factor provides five specific ways in which useful contribution can be achieved. The recycler would need to document how the hazardous secondary materials add value and/or are useful to the recycling process in one or more of these ways: (i) Contributing valuable ingredients to a product or intermediate; (ii) replacing a catalyst or carrier in the recycling process; (iii) providing a valuable constituent to be recovered; (iv) being regenerated; or (v) being used as an effective substitute for a commercial product. For example, if the hazardous secondary material is a source of a valuable constituent, such as a precious metal, the document would explain the specific precious metals recovered and their value to the process.
- Valuable product or intermediate legitimacy factor—the recycler would explain how the product or intermediate made from hazardous secondary material is valuable, either in a monetary sense or through its intrinsic value. If the product made from hazardous secondary material is sold, the documentation of sale could be proof of the value of the material to a third party. Such documentation could be in the form of a selection of receipts or contracts and agreements that establish the terms of the sale or transaction. A recycler that has not yet arranged for the sale also could demonstrate value by showing that the product or intermediate can replace another product or intermediate that is available in the marketplace. Demonstrating intrinsic value may be less straightforward than demonstrating the value of products that are sold in the marketplace, but could involve an explanation of the industrial process that shows how the product of the recycling process or intermediate replaces an alternative product that would otherwise have to be purchased.
- Managed as a valuable commodity legitimacy factor—the recycler would include a description of how the hazardous secondary material is managed and explain how this management is similar or provides equivalent protection to the management of an analogous raw material. That is, the documentation would describe how the hazardous secondary material is stored and handled prior to being inserted into the recycling process. Where there is no analogous raw material, the recycler would explain how the management of the hazardous secondary material ensures that the material is contained as proposed in 40 CFR 260.10.
- Comparison of toxics in the product legitimacy factor—the recycler would include any data or information that shows that the levels of hazardous constituents in the product are comparable to or lower than those found

in analogous products. For example, if a recycling process produced paint, the levels of hazardous constituents in the paint would be compared to the levels of the same constituents found in a similar paint made from virgin raw materials. This comparison would be included in the documentation of this legitimacy determination. A recycler is also allowed to perform this evaluation by comparing the hazardous constituents in the hazardous secondary material feedstock with those in an analogous raw material feedstock. This may be easier in cases where the recycler knows that the hazardous secondary material is very similar in profile to the raw material. It may also be preferable in cases where the recycler creates an intermediate which is later processed again and may end up in two or more products, where there is no analogous product or when production of the product of the recycling process has not yet begun.

As discussed above, the Agency is also proposing that the legitimacy standard be codified for all hazardous secondary material recycling, not only for the specific DSW exclusions promulgated in the 2008 DSW final rule. As part of ensuring that all hazardous secondary material recycling is legitimate, we are proposing that recyclers under these other exclusions and those recycling under the Subtitle C hazardous waste regulations (which often are subject to reduced regulatory requirements) also maintain documentation in their files of why their recycling is legitimate. This proposed administrative requirement would apply to all recycling that is ongoing after the effective date of the final rule adopting this requirement. We are interested in receiving public comment on this issue.

As far as how documentation would work for existing exclusions, as we noted in the 2003 DSW proposal, EPA has already examined in depth a number of waste-specific and industry-specific recycling activities and has promulgated specific regulatory exclusions or provisions that address the legitimacy of these practices in much more specific terms than the general factors that were finalized as part of the 2008 DSW exclusions and non-waste determination process. One example is the regulation for zinc fertilizers made from recycled hazardous secondary materials. In the zinc fertilizer regulation, among the requirements established by EPA are specific numerical limits on five heavy metal contaminants and dioxins in the zinc fertilizer product exclusion at 40 CFR 261.4(a)(21). We believe that data showing the zinc fertilizer product meets those numerical limits would be sufficient for documenting that the product meets legitimacy factor 4 (comparison of toxics in the product) for these contaminants. As noted earlier, if fertilizer made from hazardous secondary materials contains other hazardous constituents that do not have specific numerical limits in 40 CFR 261.4(a)(21), then the generator or recycler would need to compare the levels of those hazardous constituents with those in an analogous fertilizer product not made from hazardous secondary materials. Other examples of existing exclusions where EPA has established specific conditions that are related to their legitimacy determinations are shredded circuit boards excluded under 40 CFR 261.4(a)(14), which must be free of mercury switches, mercury relays, and nickel-cadmium and lithium batteries, and comparable fuels excluded under 40 CFR 261.4(a)(16), which must meet specific levels for hazardous constituents (thus, meeting legitimacy factor 4).

The conditions developed for the recycling exclusions in § 261.4(a) were found to be necessary under material-specific rulemakings that determined when the particular hazardous secondary materials in question are not solid wastes. When EPA originally made the decision that these hazardous secondary materials are not solid waste, the Agency took into account the relevant factors about the hazardous secondary materials, including how the materials were managed and what toxic chemicals were present.

Thus, for those specific exclusions in § 261.4(a) that have conditions that relate directly to legitimacy, documentation that shows that the recycling facility meets those conditions would be what is necessary to show that the recycling of such material is meeting those specific legitimacy factors. However, a recycling facility would also have to include a description of how it meets the other legitimacy factors that may not be reflected in the waste-specific conditions of the exclusion, in its legitimacy documentation.

EPA is requesting comment on the requirement for documentation of legitimacy from facilities performing the recycling, for both the 2008 DSW exclusions and for the existing recycling exclusions. In particular, EPA is requesting comment on whether the proposed documentation requirement is necessary for implementation and enforcement of the legitimacy provision.

XI. Revisions to Solid Waste Variances and Non-Waste Determinations

The Agency is also proposing today to modify the existing regulation of solid waste variances at 40 CFR 260.31(c), 40 CFR 260.33 and 40 CFR 260.34 to foster greater consistency on the part of implementing agencies and help ensure the protectiveness of the implementation of the solid waste variances and non-waste determinations. Specifically, EPA is proposing to do the following:

1. Revise 40 CFR 260.33(c) to require facilities to re-apply for a variance in the event of a change in circumstances that affects how a material meets the criteria upon which a solid waste variance has been based;

2. Add a provision at 40 CFR 260.33(d) stating that facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of this chapter;

3. Revise the criteria for the partial reclamation variance in 40 CFR 260.31(c) to more clearly explain when the variance applies and to require, among other things, that the criteria for this variance must be reviewed and evaluated collectively, since each criterion reinforces and supports other criterion;

4. Revise the criteria for the non-waste determination in 40 CFR 260.34 to require that petitioners explain or demonstrate why their hazardous secondary materials cannot meet, or should not have to meet, the existing DSW exclusions under §§ 261.2 or 261.4; and

5. Designate the Regional Administrator as the EPA recipient of petitions for variance and non-waste determinations.

Finally, EPA is requesting comment on other possible steps to help ensure national consistency and protectiveness in the implementation of variances and non-waste determinations.

In response to the May 27, 2009, **Federal Register** notice announcing the DSW public meeting, commenters identified issues with the implementation of the non-waste determination process, arguing that (1) determinations can lead to inconsistency among states and may negatively impact economies for states that are more stringent in their determinations; (2) determinations may require a large amount of state resources to review and process; and, (3) determinations that are indefinitely approved may not receive the proper level of oversight required to ensure that

legitimate and safe reclamation is occurring.[29]

While these comments were focused on the non-waste determination petition process in the 2008 DSW final rule (which was the focus of the public meeting), they can apply equally to the solid waste variances as well, since the procedures in 40 CFR 260.33 are intended to apply to both. Thus, EPA is proposing to make changes that affect both the solid waste variances and the non-waste determinations.

A. Proposed Revisions to Procedures for Variances and Non-Waste Determinations Found in 40 CFR 260.33

Under the current regulatory framework, 40 CFR 260.30 provides the Administrator with the authority to grant a variance from the definition of solid waste or a non-waste determination on a case-by-case basis if materials are recycled in a particular manner. The practical effect of both the solid waste variances and the non-waste determinations is the same; once a petition is granted by EPA or the authorized state, the hazardous secondary material is not regulated as a solid or hazardous waste. The procedures for these variances and non-waste determinations are found in 40 CFR 260.33.

In today's proposed rule, EPA is proposing two changes to 40 CFR 260.33. First, EPA is proposing to make all variances subject to the provision in 40 CFR 260.33(c) that would require an applicant to re-apply for a variance in the event that the material no longer meets the relevant criteria. Second, EPA is proposing to make all variances and non-waste determinations subject to the biennial notification requirements in 40 CFR 260.42.

1. Requirement That an Applicant Re-Apply in the Event the Material No Longer Meets the Relevant Criteria

The 2008 DSW final rule noted that once a non-waste determination has been granted, the applicant is obligated to ensure the hazardous secondary material continues to meet the criteria of the non-waste determination, including any conditions specified therein by the regulatory authority. If a change occurs that affects how the hazardous secondary materials meet the relevant criteria and (if applicable) any conditions as specified by the regulatory authority and the applicant fails to re-apply to the Administrator for a formal determination, the hazardous secondary materials may be determined to be solid and hazardous waste and subject to the RCRA Subtitle C hazardous waste requirements (73 FR 64712–13, October 30, 2008). This requirement was codified at 40 CFR 260.33(c).

The requirement that the hazardous secondary materials determined to not be a solid waste must continue to meet the relevant criteria of a solid waste variance or non-waste determination is inherent in the regulations. Failure to meet the criteria could indicate that the hazardous secondary materials are discarded and a solid waste and would trigger the need to re-examine the circumstances of the recycling. The 2008 DSW final rule codified this requirement in order to enhance clarity and assist in its implementation, but only focused on the non-waste determination provisions because that was the scope of that rule.

EPA is now proposing to explicitly apply 40 CFR 260.33(c) to all the solid waste variances, as well as the non-waste determination provisions listed in 40 CFR 260.30 to ensure that if there are changes that may impact how hazardous secondary materials meet the relevant criteria, that such changes be considered by the regulatory authority to ensure that those criteria continue to be met. Codifying this requirement would help ensure clarity and consistency by providing an administrative procedure for reconsidering a variance in the event that the hazardous secondary material no longer meets the relative criteria for the variance.

2. Proposed Re-Notification Requirement

The second proposed change to 40 CFR 260.33 is to require facilities receiving variances or non-waste determinations to re-notify EPA or the State Director, if the state is authorized for this aspect of the rule, every two years by March 1 of each even-numbered year and to notify within 30 days of stopping management of hazardous secondary materials under the variance or non-waste determination using EPA Form 8700–12 in compliance with 40 CFR 260.42. The current process cannot track variances or non-waste determinations at a national level and over time. This lack of tracking can lead to state-to-state inconsistency in determinations because one state cannot easily access information regarding similar determinations made by another state. Two commenters expressed specific concern over this inconsistency, arguing that variations in stringency can drive jobs out of more-stringent states and into less-stringent states. These commenters argued that more detailed or restrictive criteria and EPA oversight are necessary to ensure that non-waste determinations are issued consistently across states. One of the commenters also recommended increasing transparency by making the non-waste determinations available online. Additionally, lack of tracking inhibits effective oversight of facilities receiving variances and non-waste determinations because it does not provide regulatory authorities with a mechanism for receiving updated information.

Amending the procedures for variances and non-waste determinations to require re-notification ensures that regulatory authorities are provided regularly updated information (such as information regarding quantities of hazardous secondary materials managed under the determination). Such updating enables better compliance with the criteria and with any stipulations of the variance or non-waste determination. Additionally, this information can be used to identify facilities which may have undergone changes to their reclamation process significant enough to trigger a review of the determination under 40 CFR 260.33(c).

This proposed change is also based on EPA's experience with the § 260.42 notification requirement. Since the 2008 DSW final rule became effective on December 29, 2008, EPA has received a number of notifications from facilities managing hazardous secondary materials under the generator-controlled and transfer-based exclusion and has judged the notification provision to have worked well in enabling regulatory authorities to monitor compliance of the facilities with the conditions of the exclusions. Regulatory authorities receive information on the name and location of the facilities operating under the exclusion and the types and quantities of hazardous secondary materials the facility is managing, which allows the regulatory authority to prioritize inspections, as well as create a list of facilities that would benefit from training and compliance assistance on the rule.

Additionally, notification has allowed regulatory authorities to follow up with facilities that appear to have misunderstood the regulations. For example, notification allows regulatory authorities to contact facilities that notified that they were operating under the exclusions but were, in fact, residing in a state that had not adopted the 2008 DSW final rule. Notification in these instances allowed regulatory authorities to identify problems and to intervene

[29] EPA stated in the public meeting notice that we did not expect to repeal the non-waste determination process and thus we did not explicitly ask for comment on the provision in the notice. However, in some cases, commenters did address this provision.

early to prevent potential mismanagement. Based on experience with receiving notifications under the 2008 DSW final rule, EPA is convinced of the value of the notification provision in ensuring proper implementation of its rules and believes that such notification for variances and non-waste determinations would increase the transparency and oversight of facilities receiving a variance or non-waste determination.

In addition to re-notification, EPA also plans to increase the transparency of the variance and non-waste determination petition processes by providing online access to a list of facilities receiving variances and non-waste determinations, including any supporting documentation upon which a determination has been made. Ideally, this Web site would function as a clearinghouse of information so that the states could use each other's determinations to inform determinations within their own state borders. EPA believes this sharing of information would increase consistency in determinations across states. EPA plans to work with states to develop a process for collecting information regarding non-waste determinations so that EPA can include these facilities in its online database.

B. Proposed Revisions to Partial Reclamation Variance

The ''partial reclamation'' variance at 40 CFR 260.30(c) applies to materials that have been reclaimed, but must be reclaimed further before the materials are completely recovered (*i.e.,* ''partial reclamation''). In turn, 40 CFR 260.31(c) provides the specific standards that a material must meet in order to be eligible for a variance from classification as a solid waste.

Today, the Agency is proposing to revise the partial reclamation variance provision of 40 CFR 260.31(c) to clarify when partially-reclaimed materials are not solid waste because they are commodity-like. The objectives of these proposed revisions are to clarify the regulatory language, foster consistent application of the variance criteria, and make clear that the variance should be granted only when partial reclamation has produced a commodity-like material. EPA's proposed modifications of 40 CFR 260.31(c) include (1) revising the introductory text to clarify when the variance applies; (2) revising the introductory text to require that all of the decision criteria must be met; (3) revising the language of all of the decision criteria; and (4) eliminating the sixth criterion ''other relevant factors.''

1. The Current Partial Reclamation Variance Provision

Under the current regulations, 40 CFR 260.30, 260.31, and 260.33 together provide variance mechanisms for three types of recycled materials which the Regional Administrator (or State Director, in an authorized state) may determine, on a case-by-case basis, are not solid waste if they meet specified criteria. One of the variances, found in 40 CFR 260.30(c), with associated criteria at 40 CFR 260.31(c), addresses materials that have been partially reclaimed but must be reclaimed further before the materials are completely recovered. Under current 40 CFR 260.31(c), the Regional Administrator may grant a request for a variance for such materials if, after initial reclamation, the resulting material is commodity-like. The determination that a partially reclaimed material is commodity-like is made using the following six factors:

(1) The degree of processing the material has undergone and the degree of further processing that is required;

(2) The value of the material after it has been reclaimed;

(3) The degree to which the reclaimed material is like an analogous raw material;

(4) The extent to which an end market for the reclaimed material is guaranteed;

(5) The extent to which the reclaimed material is handled to minimize loss; and

(6) Other relevant factors.

In the preamble to the 1985 Definition of Solid Waste final rule (January 4, 1985; 50 FR 655) where this provision was promulgated, EPA stated that ''the Regional Administrator may weigh these factors as she sees fit, and may rely on any or all of them to reach a decision.''

2. The Intent of the Partial Reclamation Variance

When the partial reclamation variance provision was promulgated in 1985, EPA's intent was to provide a mechanism for determining that a hazardous waste had undergone sufficient reclamation (a type of processing) to produce a material that was more like a commodity than a solid waste. The variance would be applicable if the material was commodity-like, even though some further reclamation was required before the material became a commercial product. EPA intended that the variance would be applied at the point that the commodity-like material was produced. After that point, the material would be managed as a commodity rather than as a solid and hazardous waste. Prior to the point that partial reclamation produced a commodity-like material, the material would have to be managed as a hazardous waste.

The following discussion illustrates how the Agency intended the variance to work for a typical treatment system involving three parties: (1) A generator of hazardous waste; (2) a partial reclamation facility that receives, stores, and partially reclaims the hazardous waste to produce a commodity-like material; and (3) a final reclaimer, or end market, that receives the commodity-like material and uses it as a substitute for products or intermediates in production processes that involve further reclamation.

First, the generator would manage and ship the hazardous waste following all of the applicable hazardous waste regulations, including waste quantity determinations, accumulation time limits, generator accumulation technical requirements, and hazardous waste manifest procedures for shipping. Second, the partial reclamation facility would receive the hazardous waste under a hazardous waste manifest. The facility would also have a RCRA permit for management of the hazardous waste until the point that the partial reclamation process had produced a commodity-like material.

Once the partial reclamation process had produced a commodity-like material, a partial reclamation variance from classification as solid waste could be granted. Accordingly, management of the commodity-like material after that point would not be covered by the partial reclamation facility's RCRA permit. In addition, the partial reclamation facility would not be required to use a manifest to ship the commodity-like material to the final reclaimer.

Finally, the final reclaimer would receive the commodity-like material from the partial reclaimer without a manifest. The final reclaimer would not require a RCRA permit for management of the commodity-like material because the material is not a solid and hazardous waste.

The preceding discussion illustrates how the variance would apply to a typical three-facility, three-step process. However, the critical point is not how many steps or facilities are involved, but at what point the partial reclamation process has produced a commodity-like material as defined by the criteria in 40 CFR 260.31(c). Depending on the materials and processes in question, this point could occur at varying steps in the management of a hazardous waste, at varying facilities where it is managed.

3. Experience With the Current Partial Reclamation Variance Provision

EPA has become aware that authorized states across the country have interpreted and applied the variance provision inconsistently, even in similar circumstances. This inconsistency may be due to (1) the wide discretion allowed the regulatory authority to weigh any or all of the decision criteria in any way it sees fit; (2) lack of clarity in the decision criteria themselves; or (3) the general sixth criterion ''other relevant factors.''

This inconsistency has resulted in variances being granted under 40 CFR 260.31(c) for some materials that are not yet commodity-like and that are still clearly hazardous waste. Therefore, EPA is proposing revisions to the variance criteria to address the inconsistency among authorized states, remove ambiguities, and clearly convey the original intent that only hazardous wastes that have been partially reclaimed to produce commodity-like materials are eligible for a variance from classification as solid waste. Consistent and appropriate application of the partial reclamation variance is necessary so that the hazardous waste program provides the level of protection of human health and the environment required by the RCRA statute in all communities in all areas of the country.

An illustration of how the revised variance provision would be applied to a commonly reclaimed hazardous waste example is included in the Background Document ''F006 Reclamation.'' This document includes a detailed description of how the proposed revised variance provision would be used to make determinations about whether a variance would be appropriate for listed hazardous waste F006 (wastewater treatment sludges from electroplating operations) at various steps in the reclamation process.

4. Proposed Revisions To Clarify and Improve the Partial Reclamation Variance Provision

As stated above, EPA is proposing several revisions to 40 CFR 260.31(c). Each of the proposed revisions is discussed below.

a. *Revision to clarify the introductory text of 40 CFR 260.31(c).* EPA is proposing to revise the introductory text of 40 CFR 260.31(c) to clarify when a partial reclamation variance is applicable. The proposed revised text would make it clear that the Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that have been partially reclaimed but must be reclaimed further before recovery is completed, only if the partial reclamation has produced a commodity-like material. To qualify for a variance the material must be legitimately recycled as specified in 40 CFR 260.43, must be partially-reclaimed as determined by meeting criterion 1, and must be commodity-like as determined by meeting criteria 2–5.

The revised text is intended to clarify that the variance is applicable at the point that partial reclamation has produced a commodity-like material. The revised text includes the phrase ''has produced a commodity-like material'' and ''must be commodity-like.'' These changes clarify and reflect EPA's intent that the variance applies only after partial reclamation has produced a commodity-like material. The variance does not apply earlier in a process when a hazardous waste is still present. While not a new regulatory requirement, the proposed change also highlights that the commodity-like material must be legitimately recycled. The revised introductory text also replaces the term ''reclaimed'' with ''partially reclaimed'' to be more specific about when a variance would be applicable (*i.e.,* after partial reclamation has produced a commodity-like material, rather than after full reclamation). Finally, the revised text clarifies that the first criterion is to be used to determine whether partial reclamation has occurred and the remaining criteria are to be used to determine whether a partially-reclaimed material is commodity-like.

EPA requests comment on whether the proposed revisions to the introductory text clarify the variance provision effectively and whether they will result in appropriate and consistent decisions about whether and when to grant a variance.

b. *Revision to the introductory text of 40 CFR 260.31(c) to require that all criteria are met.* When the partial reclamation variance provision was originally promulgated in 1985, EPA stated that the Regional Administrator or authorized State Director could weigh the decision criteria ''as she sees fit, and may rely on any or all of them to reach a decision.'' Based on experience with the variance provision, EPA is proposing to change the introductory text of 40 CFR 260.31(c) to require that all criteria must be satisfied before a variance is granted. EPA is proposing this change for several reasons. First, criterion 1 emphasizes that the material must have been substantially partially reclaimed to be eligible for a variance. (This is discussed further in the next section below.) Second, we believe that each of the proposed revised criteria numbers 2, 3, 4, and 5 appropriately reflects a fundamental and essential characteristic of a commodity-like material. Therefore, all criteria must be met for the material to be determined to be commodity-like. In addition, clarifying that all of the criteria must be met will result in more consistent application of the variance by different decision makers.

EPA requests comment on whether (1) the revised introductory text is more clear, (2) the revised criteria appropriately reflect the fundamental characteristics of a commodity-like material; and (3) requiring that all criteria must be met to grant a variance will foster appropriate and consistent variance decisions.

c. *Revisions to all criteria of 40 CFR 260.31(c).* EPA is proposing revisions to all of the criteria in 40 CFR 260.31(c). First, all of the criteria have been revised to begin with the word ''whether'' to make it clear that the regulatory authority must make a yes or no determination as to whether the material meets each criterion. In addition, all of the criteria have been revised to be clearer and to better reflect the fundamental characteristics of a commodity-like material. The proposed changes to each criterion are discussed below.

1. The degree of processing the material has undergone and the degree of further processing that is required.

EPA is proposing to revise the criterion in 40 CFR 260.31(c)(1) to require consideration of whether the degree of partial reclamation the material has undergone is substantial.

This criterion examines the degree of reclamation the material has undergone to become commodity-like. The more substantial the partial reclamation step is, the more likely it is that the material generated by the partial reclamation step is commodity-like.

First, EPA is proposing to replace the general term ''processing'' with the more specific and accurate term ''partial reclamation.'' Second, EPA is proposing to remove from the criterion the concept that the initial partial reclamation step that makes a material commodity-like should be compared to the further reclamation that occurs after the material has become commodity-like. Experience with the variance has clarified that the relevant question is whether the partial reclamation that has been completed is substantial and that the material produced is not the original hazardous waste. If the material has been substantially partially reclaimed, it then can be evaluated to determine whether it is commodity-like using the

remaining criteria. The degree of reclamation that occurs in the final reclamation step is not indicative of whether the partially-reclaimed material is commodity-like. This criterion would be satisfied when the partial reclamation is substantial and has produced a material that is no longer the original hazardous waste.

EPA requests comment on whether the proposed revisions to this criterion clarify when a variance is applicable. EPA also requests comment on the appropriateness of removing the requirement to compare the degree of partial reclamation to the degree of final reclamation.

2. The value of the material after it has been reclaimed.

EPA is proposing to revise the criterion in 40 CFR 260.31(c)(2) to require consideration of whether the partially-reclaimed material has sufficient economic value that it will be purchased for final reclamation.

This criterion examines the first of four fundamental characteristics that indicates that a partially-reclaimed material is commodity-like, the value of the material produced by the partial reclamation step.

EPA is proposing to add the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process. EPA is also proposing to revise this criterion to reflect the fundamental characteristic that a commodity-like material has positive economic value. A partially-reclaimed material that is commodity-like will be purchased by those who use it in manufacturing and production operations. EPA notes that the value of a material produced at a later stage of reclamation cannot be used to justify a variance for the partially-reclaimed material produced earlier in the process. In other words, the criterion must be applied to the material as it is at the specific point in the reclamation process where application of the variance is requested.

Evidence to support this criterion may include sales information; demand for the material; and business contracts (*e.g.,* contracts specifying quantities of material sold, details of the transaction, and the effective price paid for the partially reclaimed material by purchasers (*i.e.,* after subtracting transportation costs and any other goods or services rendered in exchange for the material purchased)).

EPA requests comment on whether the proposed revisions clarify the criterion and appropriately describe the fundamental economic value characteristic of a commodity-like material.

3. The degree to which the reclaimed material is like an analogous raw material.

EPA is proposing to revise the criterion in 40 CFR 260.31(c)(3) to require consideration of whether the partially-reclaimed material is a viable substitute for a product or intermediate, produced from virgin or raw materials, which feeds subsequent production steps.

This criterion reflects the second of four fundamental characteristics of a commodity-like material that must go through further reclamation before it becomes a final commercial product. In short, the material must be sufficiently analogous to a product or intermediate used in a manufacturing process to substitute for that product or intermediate.

First, as with other criteria, EPA is proposing to add the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material, not the fully-reclaimed material produced later in the process. Second, EPA is proposing to replace the phrase ''is like an analogous raw material'' with the phrase ''is a viable substitute for a product or intermediate, produced from virgin or raw materials, which feeds subsequent production steps.'' This revision is intended to more accurately describe the fundamental characteristic of a commodity-like material used in production, which is that it will be used as a viable substitute for a product or intermediate. A partially-reclaimed material would meet this criterion if it is analogous to, or, in other words, would replace, valuable products or intermediates in the manufacturing process that have been produced (*i.e.,* partially reclaimed) from raw materials but require further processing (reclamation) steps before the manufacturing process is complete. Evidence to support this criterion would include a comparison of the physical and chemical characteristics of the partially-reclaimed material being considered for the variance to those of products or intermediates produced from virgin raw materials.

EPA requests comment on whether the proposed revisions clarify the criterion and appropriately describe the fundamental characteristic of a commodity-like material related to substituting for a product or raw material in a production process.

4. The extent to which an end market for the reclaimed material is guaranteed.

EPA is proposing to revise this criterion in 40 CFR 260.31(c)(4) to require consideration of whether there is a guaranteed end market for the partially-reclaimed material.

This criterion addresses the third of four fundamental characteristics of a commodity-like material, whether there is an end market for the partially-reclaimed material. As with other criteria, EPA is proposing to add the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material for which the variance is sought. An end market for further reclaimed material produced at a later stage of reclamation cannot be used to justify a variance for a partially-reclaimed material. EPA requests comment on whether this proposed revision clarifies the criterion effectively.

In addition, although EPA is not proposing any other substantive changes to the criterion, based on experience with the variance provision, EPA believes that further explanation of this criterion is necessary. The criterion requires an evaluation of whether an end market is guaranteed for the material for which a variance is requested. For example, if a facility requests a variance for an incoming hazardous waste, the end market that would have to be evaluated is the market for the incoming hazardous waste itself. A demonstrated end market for materials the facility produces later from the incoming hazardous waste would not be relevant to the analysis for the incoming waste.

For an end market for a partially-reclaimed material to be guaranteed, there must be secure demand and long-term markets for the material. This would make it unlikely that large quantities of the material will be stockpiled for long periods of time, lost, or mismanaged due to insufficient demand. Assessing whether an end market is guaranteed for the partially-reclaimed material requires that the applicant for the variance provide end market information for the material generated by the partial reclamation step. Evidence to support this criterion may include the material's value as an input to a production process, traditional usage of quantities of the material, contractual arrangements for use of the material, and the likely stability of markets for the material. Furthermore, the end market must be demonstrated by a record of multiple actual purchases of the partially-reclaimed material by other parties. Further reclamation that can only be

conducted by the facility seeking the variance is not proof of an end market.

5. The extent to which the reclaimed material is handled to minimize loss.

EPA is proposing to revise the criterion in 40 CFR 260.31(c)(5) to require consideration of whether the partially-reclaimed material is handled to minimize loss.

This criterion addresses the fourth of four fundamental characteristics of a commodity-like material, whether the partially-reclaimed material is handled to minimize loss, or in other words, is handled similarly to a commodity. As with other criteria, EPA is proposing to add the word ''partially-'' before the word ''reclaimed'' to clarify that the criterion applies to the partially-reclaimed material for which the variance is sought. Management of materials produced at later stages of reclamation is not relevant to how the partially-reclaimed material itself is handled. EPA requests comment on whether this proposed revision clarifies the criterion effectively.

In addition, EPA's experience with the variance provision indicates that further explanation of this criterion is necessary. Specifically, this criterion requires evaluation of how the partially-reclaimed material is handled before it is further reclaimed. Handling a partially-reclaimed material to minimize loss indicates that the material is commodity-like. Generally, persons handling hazardous waste with little or no economic value do not have the same incentives to minimize loss as persons handling commodities. Evidence to support this criterion may include documentation of facility procedures used to minimize loss (*e.g.,* inspections, training), and storage and management equipment designed to minimize loss.

6. Revision to eliminate criterion six.

Finally, EPA is proposing to eliminate the sixth and final criterion concerning other relevant factors. When the partial reclamation variance was promulgated in 1985, EPA believed that this criterion could help determine whether a material is commodity-like. However, based on experience with the variance provision, EPA now believes that criteria numbers 2, 3, 4, and 5 (as proposed to be revised) together accurately and fully reflect the fundamental substantive characteristics of a commodity-like material for the situation where a material has been partially reclaimed but must go on for further reclamation before it is a final commercial product. We have not seen other essential characteristics of this type of commodity-like material identified in variances or applications. Thus, we are proposing to eliminate this criterion. We also believe that removing this general criterion will result in more consistent and appropriate decision-making for partial reclamation variances.

EPA requests comment on removing the sixth criterion and whether there are any additional characteristics that should be evaluated to assess whether a material is commodity-like. EPA also requests comment on whether one or more of the five remaining criteria should be consolidated.

C. Proposed Change to Non-Waste Determinations

EPA is also proposing to add a criterion to both non-waste determinations that require facilities applying for a non-waste determination to explain or demonstrate why they cannot meet, or should not have to meet, the existing DSW exclusions under §§ 261.2 or 261.4.[30] Because commenters to the 2009 DSW public meeting notice have argued that the non-waste determinations may be burdensome to states, EPA believes requiring applicants to formally consider and explain why they are not eligible for an existing DSW exclusion will reduce the burden on states. This criterion reduces burden on states in two ways: (1) It requires facilities to consider existing exclusions and standards first, before pursuing a non-waste determination, which can, in turn, lead to facilities discovering that their intended recycling fits under an existing exclusion and therefore a non-waste determination petition is not needed; and (2) this criterion informs the state why a facility believes it cannot meet an existing exclusion, which is likely to be the state's first question before evaluating a non-waste determination petition. Petitioners also would be allowed to seek non-waste determinations if they could show that they should not have to meet the conditions of another exclusion, but rather should be allowed to operate under a non-waste determination with fewer or different conditions. However, if EPA or the authorized state determines that an applicant may, in fact, use an existing solid waste exclusion under §§ 261.2 or 261.4, this may be grounds for denying a non-waste determination on the basis that regulatory relief has already been granted.

[30] The two types of non-waste determinations are (1) a determination for hazardous secondary materials reclaimed in a continuous industrial process and (2) a determination for hazardous secondary materials that are indistinguishable in all relevant aspects from a product or intermediate.

D. Designating the Regional Administrator To Receive Petitions

Lastly, we are proposing to change the word ''Administrator'' to ''Regional Administrator'' in 40 CFR 260.30, 260.31, 260.32, 260.33, and 260.34. Due to the case-specific nature of the variances and non-waste determinations, we believe these decisions should be made by the Regional Administrator because of his or her regional authority. We also note that although we propose to assign the decision-making authority to the Regional Administrator, it is common practice within EPA to work with other EPA offices, EPA Regions, EPA Headquarters on decisions that may affect national policy.

E. Request for Comment on Other Possible Steps To Help Ensure National Consistency and Protectiveness in the Implementation of Variances and Non-Waste Determinations

EPA is also requesting comment on other possible steps to help ensure national consistency and protectiveness in the implementation of variances and non-waste determinations.

First, EPA is requesting comment on whether to require variances and non-waste determinations to be renewed periodically, and, if so, what time period would be appropriate (*e.g.,* two or five years). A renewal period would help ensures the hazardous secondary materials continue to meet the criteria and remain valid over time. To a certain extent, this concern would be addressed by the proposed revision to 40 CFR 260.33(c), which would require applicants to re-apply for a variance or non-waste determination in the event of a change in circumstances that affect how hazardous secondary materials meet the relevant criteria, and by the proposed biennial re-notification, which would require the applicant to review the management of their hazardous secondary materials. However, the proposed revision to 40 CFR 260.33(c) still relies on the applicant to recognize when there is a need to reconsider a variance and take action, while a specific renewal period would mandate a reconsideration. On the other hand, mandating a renewal period would be an additional burden to the states, and may not be necessary in all situations. Additionally, regulators could always stipulate time limits in specific determinations, if warranted. EPA requests comment on whether to require a renewal period and, if so, how to minimize the burden on the states.

The second possible change EPA is requesting comment on is whether to

require states to share copies of the variance and non-waste determination petitions and the tentative decisions with EPA to allow the Agency to comment and to encourage collaboration and national consistency. EPA and the states share responsibility for environmental protection and work as partners to solve the nation's environmental challenges. Because solid waste variances and non-waste determinations are made on a case-by-case basis, state governments are best situated to understand and evaluate the specific factors involved with the company submitting a petition. At the same time, EPA may be familiar with similar cases in other states or EPA Regions and can often provide additional expertise and a national perspective on issues that affect more than one location. As a general matter, the state and EPA frequently consult on such cases, helping to achieve the best results possible, taking full advantage of the unique strengths of each partner.

However, formalizing this type of collaboration would have the benefit of reinforcing this working relationship and would help ensure national consistency. Thus, EPA requests comment on whether to require authorized states to forward to EPA copies of solid waste variance and non-waste determinations petitions and tentative decisions on those petitions for review and comment.

XII. Request for Comment on Re-Manufacturing Exclusion

A. Background

In addition to the proposed changes to the definition of solid waste discussed in Sections VII–XI of this preamble, EPA is requesting comment on a focused exclusion from the definition of solid waste for certain types of higher-value hazardous secondary materials [31] which are being re-manufactured into commercial-grade products.

The goal of the re-manufacturing exclusion would be to encourage sustainable materials management by identifying specific types of transfers of hazardous secondary materials to third parties that, under appropriate conditions, do not involve discard and can result in extending the useful life of a commercial-grade chemical.

Sustainable materials management, as discussed in more detail in Section V.J. of this preamble, considers system-wide impacts, and represents a shift away from end-of-life waste management and toward a more sustainable future that avoids unintended consequences. The benefits of sustainable materials management broadly include potential reductions in energy used, more efficient use of materials, more efficient movement of goods and services, conservation of water, reduced greenhouse gas and other air emissions, and reduced volume and toxicity of waste. In particular, when hazardous secondary materials can be kept in the manufacturing process, rather than disposed of, or used in a lower-value process such as cleaning or degreasing, substantial environmental benefits can be obtained.

As discussed in Section VII of this preamble, EPA is proposing to replace the transfer-based exclusion found in 40 CFR 261.4(a)(24) and (a)(25) with an alternative Subtitle C regulatory scheme because of the potential for adverse impacts to human health and the environment from discarded hazardous secondary materials. EPA believes that such a standard would be more appropriate for hazardous secondary material because (1) the Agency reasonably believes (as explained in detail in the 2008 DSW final rule) that, absent specific conditions, transfers of hazardous secondary materials to third-party reclaimers generally involve discard, and (2) the conditions of the 2008 DSW final rule have serious gaps, particularly the incentives to accumulate larger volumes of hazardous secondary materials, the reduction in oversight resulting from eliminating the permit requirement for storage, and the reduction in the public's access to information and the opportunity for public participation, that could create a potentially unacceptable likelihood of adverse effects to human health and the environment from such discarded material.

However, as also discussed in Section VII, EPA acknowledges that some specific types of hazardous secondary materials are more like valuable commodities than solid wastes, and thus the act of transferring them to a third party under appropriate conditions does not necessarily involve discard. From a sustainable materials management perspective, these materials are the ideal candidates for focused regulatory changes that would address their life-cycle impacts and help extend their useful life. Many of the other exclusions in 40 CFR 261.4(a) were developed for these types of hazardous secondary materials, and the non-waste determination process under 40 CFR 260.34(c) provides an administrative process for additional hazardous secondary materials that are indistinguishable from a product to be determined to be non-wastes.

To further encourage sustainable materials management,, EPA is requesting comment on an exclusion for the transfer of higher-value hazardous secondary materials from one manufacturer to another, for the purpose of extending the useful life of the original material product by keeping such materials in commerce to reproduce a commercial grade of the original material product (a process that for the purpose of this preamble discussion EPA is defining as ''re-manufacturing''). Re-manufacturing these higher-value hazardous secondary materials can have significantly lower environmental impact than creating these material products and using them one time in their virgin state and then transferring them for off-site treatment and disposal, especially with regards to non-renewable materials. Thus, re-manufacturing allows the material products to be used again, lowering their life-cycle environmental impacts significantly.

Specifically, EPA has reached a preliminary conclusion that, under appropriate conditions, the potential for discard in inter-company re-manufacturing transfers for certain higher-value spent solvents would be low because they will be incorporated into the manufacturing process rather than accumulated or disposed of. Once these solvents are re-manufactured to commercial grade, they can be used as replacements for virgin commercial grade solvents. The economic incentive for a company receiving the spent solvents would be to sell or directly use (avoiding purchase of virgin product) the re-manufactured solvent products to realize an economic value. The company sending these higher-value hazardous secondary materials for re-manufacturing is expected to have little economic incentive to pay the receiving company more than a nominal amount of money, since it would already be transferring something of intrinsic market value (materials that can be easily re-manufactured for profit). So, unlike the RCRA-permitted waste handler which can charge a considerable fee for receiving discarded waste, the company receiving these higher-value hazardous secondary materials for re-manufacturing is expected to realize most of its profit from the sale or use of re-manufactured solvents.

Once re-manufacturing processes are in place, EPA expects that solvent re-manufacturers would be competitive with solvent manufacturers even in the event of a downturn in the sizable

[31] ''Higher-value'' hazardous secondary materials are those who have a higher value than most types of hazardous secondary materials and can be used in manufacturing commercial-grade products.

chemical markets. Companies would also have the flexibility to redirect re-manufacturing capacity to manufacturing should it ever make economic sense to do so, leaving little economic reason to accumulate unsold or unused re-manufactured solvents.

Although the following discussion focuses mainly on spent solvents, EPA would welcome information on other types of non-renewable hazardous secondary materials that could benefit from a focused regulatory change that would encourage sustainable materials management and be protective of human health and the environment.

B. Conditions for the Re-Manufacturing Exclusion

Given the wide variety of hazardous secondary materials and industrial processes, EPA believes it is reasonable to set conditions for the exclusion which there is supporting evidence that discard will be avoided and risk will be controlled. The supporting evidence that EPA is relying on for defining the conditions of this exclusion has been gathered from some of the Agency's ongoing efforts to promote sustainability and resource conservation.

In particular, the Green Engineering Program within the Office of Chemical Safety and Pollution Prevention (OCSPP) has for several years been studying re-manufacturing scenarios for ''once-used'' solvents in several industry sectors that use solvents as chemical manufacturing and processing aids. By focusing on the life-cycle (cradle-to-grave) impact of the manufacture, process, and use of chemicals, and reviewing Toxics Release Inventory (TRI) production-related waste reporting, EPA has found that a large, but often hidden lifecycle environmental impact of a final consumer product is from the solvents used to produce the consumer product. For example, pharmaceutical manufacturers use at least 100 kg of solvents to make 1 kg of active pharmaceutical ingredient. The lifecycle impact of these solvent streams, which often are disposed after a single use under current regulatory conditions, is very high.EPA has determined that the environmental impacts from solvents used as manufacturing and processing aids could be significantly reduced if the product life of solvents used for these purposes were extended to more than a single use.[32]

Based on this information, EPA proposes that all of the following conditions would need to be satisfied for eligibility under a re-manufacturing exclusion. The purpose of these conditions is to ensure that the exclusion would focus on higher-value hazardous secondary materials that are being re-manufactured rather than discarded.

(1) The hazardous secondary material consists of one or more of the following solvents: Toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, N,N-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and methanol;

(2) The hazardous secondary material originated from using one or more of the above-listed solvents in commercial grade for reacting, extracting, purifying, or blending chemicals in the pharmaceutical, organic chemical, or plastics and resins manufacturing sectors, or the paint and coatings sector;

(3) After re-manufacturing, the continuing use of the solvent is limited to reacting, extracting, purifying, or blending chemicals in the pharmaceutical, organic chemical, or plastics and resins manufacturing sectors, or the paint and coatings sector, or using them as ingredients in a product. These allowed continuing uses correspond to chemical functional uses enumerated under the proposed modification to the Inventory Update Rule of the Toxic Substances Control Act (40 CFR parts 704, 710–711), including Industrial Function Codes U015 (solvents consumed in a reaction to produce other chemicals)[33] and U030 (solvents become part of the mixture).[34]

(4) After re-manufacturing, the continuing use of the solvent does not involve cleaning or degreasing oil, grease, or similar material from textiles, glassware, metal surfaces, or other articles (These disallowed continuing uses correspond to chemical functional uses in Industrial Function Code U029 under the proposed modification of the Inventory Update Rule of the Toxics Substances Control Act);

(5) Additionally, both the hazardous secondary material generator and the re-manufacturer would have to

a. Notify EPA or the State Director, if the state is authorized for the program, and update the notification every two years per 40 CFR 260.42;

b. Develop and maintain a re-manufacturing plan which includes information on the types and expected annual volumes of solvents to be re-manufactured, the processes and industry sectors that generate the solvents, the specific uses and industry sectors for the re-manufactured solvents and the legitimacy of the re-manufacturing process;

c. Maintain records of shipments and confirmations of receipts for a period of three years from the dates of the shipments;

d. Prior to re-manufacturing, store the hazardous spent solvents in tanks or containers that meet technical standards that would be the same as those found in 40 CFR part 264 subparts I and J, with the tanks and containers being labeled or otherwise having an immediately available record of the material being stored;[35] During re-manufacturing, and during storage of the hazardous secondary materials prior to re-manufacturing, ensure that there is effective control of hazardous air emissions by complying with all applicable NESHAP standards, and with the requirements of 40 CFR part 264 or 265 subparts AA, BB, CC; and

e. Meet the requirements prohibiting speculative accumulation per 40 CFR 261.1(c)(8).

The rationale for the data elements under each condition is provided below. EPA requests comment on each of the conditions, the specific data elements under each condition, and/or any other types of scenarios that might also meet EPA's proposed definition of re-manufacturing (*i.e.,* the transfer of a higher-value secondary material from one manufacturer to another, for the purpose of keeping the hazardous secondary material in commerce to produce a commercial grade product). In addition, EPA requests comment on whether, as part of the re-manufacturing plan, the hazardous secondary materials generator and the re-manufacturer should be required to estimate the energy and environmental benefits of re-manufacturing versus the use of virgin feedstock.

[32] U.S. EPA *Benefits of the Re-manufacturing Exclusion,* June 2011.

[33] *U015 Intermediates: Chemical substances consumed in a reaction to produce other chemical substances for commercial advantage. A residual of the intermediate chemical substance which has no separate function may remain in the reaction product.*

[34] *U30 Solvents (which become part of product formulation or mixture): Chemical substance used to dissolve another substance (solute) to form a uniformly dispersed mixture (solution) at the molecular level. Examples include diluents used to reduce the concentration of an active material to achieve a specified effect and low gravity materials added to reduce cost.*

[35] These standards would be specified in the regulatory language of this exclusion, but would be the same technical standards as those required in 40 CFR part 264 subparts I and J.

1. Designated Solvents

EPA has identified 18 chemicals that could be included in the re-manufacturing exclusion. They are toluene, xylenes, ethylbenzene, 1,2,4-trimethylbenzene, chlorobenzene, n-hexane, cyclohexane, methyl tert-butyl ether, acetonitrile, chloroform, chloromethane, dichloromethane, methyl isobutyl ketone, N,N-dimethylformamide, tetrahydrofuran, n-butyl alcohol, ethanol, and methanol.[36]

EPA believes that including these 18 chemicals in a re-manufacturing exclusion is a good opportunity for reducing the risks associated with these chemicals at the present time. Risk is a function of hazard and exposure, and, from a hazard perspective, all of these chemicals have suspected or recognized hazardous health effects associated with their manufacture, processing, and use.[37] Although EPA and industry have been working to find substitutes for the more hazardous of these solvents, or find ways to use less of them, this has not yet been achieved.[38, 39] With respect to the pharmaceutical sector in particular, complex chemical processes already registered with the Food and Drug Administration are involved, and EPA has found this a very challenging area to address. In addition, some of these solvents are building block and primary intermediate chemicals, making them difficult to replace. Until lower-risk substitutes for these solvents are found, it is helpful from a health risk standpoint to minimize the volume of solvents manufactured and to limit exposure to those already manufactured. This is something that the re-manufacturing exclusion can help achieve.

The exclusion can help reduce exposure to these solvents in three ways. First, the exclusion would extend the useful life of existing solvents, which would reduce the health risks associated with their manufacture by slowing the rate at which they are manufactured. Second, the exclusion would reduce exposure to solvents already manufactured by reducing the fuel blending of spent solvents. Re-manufacturing a spent solvent will eliminate the need for blending it with another spent solvent to satisfy the fuel-ratio requirements of incinerators and cement kilns. This, in turn, will reduce the fugitive emissions associated with unloading and loading containers of volatile solvents at fuel-blending facilities. All solvents are volatile, and virtually all spent solvents must go through the fuel-blending process prior to disposal.[40] Third and finally, the exclusion can reduce the potential exposure from any transportation incidents, since it is likely spent solvents can be transported shorter distances for re-manufacturing purposes than they can for disposal purposes.[41]

These 18 solvents are used in large volumes as chemical manufacturing aids, chemical processing aids, and chemical formulation aids (generally referred to as ''processing aids'' for the purpose of this rule). The ''processing aids'' solvents assist in the reaction, extraction, purification, and blending of ingredients and reactive products, but are not themselves reacted. These processing aid solvents, once used, can then be re-manufactured to commercial grade again. These higher-value solvents were selected because there are existing markets for all these solvents to be re-manufactured to serve similar purposes to those of the original commercial-grade materials.

Note that, as explained below, these hazardous spent solvents would only be eligible if their originating use was of a specific type, and if they are re-manufactured to serve certain types of commercial functions. This restriction would help limit the exclusion to higher-value materials and processes that resemble manufacturing more than waste management.

EPA believes that spent solvents are particularly appropriate for the re-manufacturing exclusion because they are derived from a non-renewable resource (petroleum), and they are manufactured in the industrial chemicals sector, which, according to EPA's report on sustainable materials management, ranks third overall as far as direct adverse overall impact to the environment.[42] EPA requests comment on whether these solvents are appropriate for inclusion in the re-manufacturing exclusion, and whether there are other solvents, chemicals or other types of hazardous secondary materials that should be included in the re-manufacturing exclusion. In particular, EPA requests comment on opportunities for re-manufacturing other types of non-renewable hazardous secondary materials, such as metal catalysts or other types of metal-bearing hazardous secondary materials.

2. Chemical Functions

EPA believes that the re-manufactured chemical product should serve a similar functional purpose as the original commercial-grade material so that it can substitute for virgin product, since it is this substitution that displaces some manufacturing of virgin product and fosters a system where the original solvent remains in commerce and is not discarded. EPA has identified the following chemical functions for possible inclusion in the re-manufacturing exclusion: chemical manufacturing aid (reacting, extracting, blending and/or purifying chemicals), and chemical processing aid (extracting, blending and purifying chemicals).[43] The solvents used for these functions can be separated readily from the other reaction components and therefore do not get contaminated as do solvents used for cleaning or degreasing operations, which are more likely to become discarded.

More environmental benefits will be obtained by maximizing the number of times a chemical product can be used at high-purity grade as an aid to chemical manufacturing and processing, before it is used for at lower-purity as a cleaner or degreaser. While it is possible to extend the product life of a used chemical as a cleaner/degreaser, it takes significantly less energy to bring solvents used as chemical manufacturing aids back to commercial grade than to bring solvents used as cleaners and degreasers back to lower grade functionality, making re-manufacturing of the higher-value solvents more economically feasible.

Accordingly, the functions that the re-manufactured chemical products should serve would be the same as those enumerated above, plus the use in the formulation of the final product (a function which causes the solvent to remain in the product), or use as a chemical intermediate (a function which causes the solvent to be consumed in a chemical reaction).

With respect to the hazardous secondary material generator, this

[36] U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Re-manufacturing Exclusion,* June 2011.

[37] Allen, D., Shonnard, D, *Green Engineering: Environmentally Conscious Design of Chemical Processes, Risk Concepts,* chapter 2, pgs 35–62, Austin, S., US EPA Editor, Published by Prentice-Hall, 2001.

[38] For information on U.S. EPA's Green Chemistry Program, *see http://www.epa.gov/gcc/.*

[39] Information on the American Chemical Society's Green Chemistry Institute's Pharmaceutical Roundtable is available via the ACS Web site *http://portal.acs.org/portal/acs/corg/content.*

[40] U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Re-manufacturing Exclusion,* June 2011.

[41] *Id.*

[42] U.S. EPA. *2020 Vision Report: Sustainable Materials Management: The Road Ahead,* Table 1, page 25. *http://www.epa.gov/waste/inforesources/pubs/vision.htm.* The other top ranked sectors are electric services (#1) and cotton production (#2).

[43] U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Re-manufacturing Exclusion,* June 2011.

exclusion would focus on the functions of aiding chemical manufacturing and processing because the solvents performing these functions retain their original physical and chemical properties. In these functions, the solvents do not get contaminated by substances from which they are difficult to separate, such as inks and greases, but only get mixed with pure product ingredients, from which they can be separated readily in a commercially feasible manner. Furthermore, manufacturing and processing operations can be more easily controlled in terms of exposure and releases, whereas the spent solvents from downstream uses such as degreasing and cleaning operations are of inherently lower-value and these downstream operations result in more widespread exposure and releases and a higher potential for discard.

EPA requests comment on whether these chemical functions are appropriate for inclusion in the exclusion and whether there are other chemical functions that should also be included in the re-manufacturing exclusion.

3. Manufacturing Sectors

EPA intends that any exclusion would be limited to companies whose primary business is manufacturing, rather than waste management, as indicated by particular NAICS codes. EPA has identified the operations of four manufacturing sectors as candidates for the re-manufacturing exclusion: Pharmaceutical manufacturing (NAICS 325412), basic organic chemical manufacturing (NAICS 325199), plastics and resins manufacturing (NAICS 325211), and the paints and coatings manufacturing sectors (NAICS 325510). Manufacturers within these four sectors all use one or more of the eighteen identified solvents as chemical manufacturing, processing, and formulation aids in high volumes. Based on the Toxics Release Inventory information, these four sectors are also closely associated with the chemical functions identified in the exclusion and currently use a high volume of the solvents for the functional purposes included in this exclusion. Therefore, these four sectors seem to be good candidates for inclusion in the exclusion.[44]

As discussed earlier, companies whose primary business is the sale of a commercial product do not operate under the same market forces as commercial recyclers, whose profit depends on maximizing the amount of hazardous secondary material accepted, creating a perverse market incentive to over-accumulate hazardous secondary material, resulting in discard. It is not intended that the exclusion could be utilized by a commercial recycler even if it undertook reclamation operations involving the chemicals and chemical functions described above. Commercial recyclers are best regulated by the RCRA hazardous waste standards since waste handling is their primary business and RCRA standards are the primary governing standards for this line of business.

EPA requests comment on whether these sectors are appropriate for inclusion in the exclusion, and whether there are other industry sectors that should be included in the re-manufacturing exclusion. In particular, while the re-manufacturing exclusion on which EPA is requesting comment focuses on those industry sectors that generate large volumes of spent solvents, we also are interested in other industry sectors that would generate other materials, especially other types of non-renewable materials, such as metal-bearing hazardous secondary materials. For example, the ''2020 Vision Report'' identifies industry sectors that could be evaluated and for which significant environmental gains could be realized through sustainable materials management. Thus, EPA requests comment on which sectors provide the most opportunity for reducing overall environmental impact by encouraging sustainable materials management through re-manufacturing.[45]

4. Additional Exclusion Conditions

EPA has identified the following additional conditions as necessary for the proper implementation of a re-manufacturing exclusion and to ensure that the hazardous secondary materials are managed in a way that does not involve discard.

a. *Notification.* Notification under a re-manufacturing exclusion would serve the same purpose and operate similarly to the notification provision found at 40 CFR 260.42. In other words, hazardous secondary material generators and re-manufacturers would have to submit a notification prior to operating under the exclusion and by March 1 of each even-numbered year thereafter using EPA form 8700–12 to the EPA Regional Administrator or the State Director, in an authorized state. Additionally, these facilities would have to notify within 30 days of stopping management of hazardous secondary materials under the exclusion. The notification would include:

- The name, address and EPA ID number (if applicable) of the facility;
- The name and telephone number of a contact person;
- The NAICS and TRI code of the facility;
- When the facility expects to begin managing the hazardous secondary material in accordance with the re-manufacturing exclusion;
- A list of the hazardous secondary materials that would be managed according to the new standard (reported as the EPA hazardous waste numbers that would apply if the materials were managed as hazardous waste);
- The quantity of each hazardous secondary material solvents to be managed annually; and
- The certification signed and dated by an authorized representative of the facility.

The intent of the notification requirement is to provide basic information to the regulatory agencies about who will be managing hazardous secondary materials under the re-manufacturing exclusion. The specific information included in the notification requirement enables regulatory agencies to monitor compliance and to ensure hazardous secondary materials are managed in accordance with the exclusion and not discarded.

b. *Re-manufacturing plan.* A key issue for a re-manufacturing exclusion would be how the facilities operating under the exclusion would demonstrate that they meet the requirements (*e.g.,* that the hazardous secondary materials, functions, and manufacturing sectors are those identified in the exclusion). A straightforward method would be to require a re-manufacturing plan to be prepared and maintained by both the hazardous secondary material generator and re-manufacturer that includes information on the types and expected annual volumes of solvents to be excluded, the processes and industry sectors that generate the chemicals, the specific uses and industry sectors—for the re-manufactured solvents, and the legitimacy of the re-manufacturing process (see Section X for further discussion on legitimacy). The hazardous secondary material generator would also be required to make arrangements with the re-manufacturer to jointly develop this plan and to verify the appropriateness of the hazardous secondary materials for the re-

[44] U.S. EPA, *Selection of Industry Sectors, Chemicals and Functions in the Re-manufacturing Exclusion,* June 2011

[45] For an analysis of materials, products and services ranked by overall environmental impact, see U.S. EPA. *2020 Vision Report: Sustainable Materials Management: The Road Ahead,* Table 1, page 25. *http://www.epa.gov/waste/inforesources/pubs/vision.htm.*

manufacturing process before claiming the exclusion, thus helping ensure that the hazardous secondary material will be re-manufactured and not discarded.

c. *Record of shipments and confirmations of receipts.* Under a re-manufacturing exclusion, generators and re-manufacturers would need to maintain at the facility records of shipments of hazardous secondary materials for a period of three years. Specifically, for each shipment of hazardous secondary material, the generator and re-manufacturer would need to maintain documentation of when the shipment occurred, who the transporter was, and the type and quantity of the hazardous secondary materials in the shipment. This recordkeeping requirement may be fulfilled by ordinary business records, such as bills of lading. However, EPA requests comment on whether for ease of implementation and enforcement, it should require more standardized record-keeping, such as the use of a standardized bill of lading.

In addition, generators would need to maintain confirmations of receipt for all off-site shipments of hazardous secondary materials in order to verify that the hazardous secondary materials reached their intended destination and were not discarded. These receipts must be maintained at the facility for a period of three years from when they were created. Specifically, the documentation of receipt would include the name and address of the re-manufacturer, and the type, quantity, and date of hazardous secondary materials received. The Agency might not require a specific template or format for confirmation of receipt since routine business records (*e.g.,* financial records, bills of lading, copies of Department of Transportation (DOT) shipping papers, and electronic confirmation of receipt) would contain the appropriate information sufficient for meeting this requirement. However, documented information must be verifiable. Therefore, EPA requests comment on whether for ease of implementation and enforcement, it should require more standardized record-keeping, such as requiring a standard method of confirmation of receipt and/or keeping this information in a readily accessible file.

This provision is being proposed in order that all parties responsible for the excluded hazardous secondary materials would be able to demonstrate that the materials were in fact sent for re-manufacturing and arrived at the intended facility and were not discarded in transit.

d. *Management in tanks and containers.* Solvents, whether virgin or spent, are best stored in tanks or containers that possess inherent controls to address issues such a volatile air emissions, leaks, and fires or explosions. As discussed in Section VI of this preamble, spent solvents present particular management challenges associated with the storage of liquids containing volatile organic chemicals and include both halogenated and non-halogenated organic chemicals, which represent a broad range of chemicals and associated hazards.

EPA believes that by focusing on higher-value spent solvents going to re-manufacturing, a re-manufacturing exclusion reduces the chance of mismanagement of the spent solvents. However, given the history of solvent mismanagement, as demonstrated in the damage cases found in environmental problems study,[46] EPA also believes it would be appropriate to make an explicit condition that spent solvents excluded under a re-manufacturing exclusion be labeled or otherwise have an immediately available record of the material being stored and be stored prior to re-manufacturing in tanks or containers that meet technical standards that will ensure that the solvents will go to re-manufacturing and will not be discarded via leaks, spills or explosions.

For ease of implementation, EPA requests comment on establishing explicit tank and container standards which meet the technical standards that would be the same as those found in 40 CFR part 264 subparts I and J. The tank and container standards of 40 CFR part 264 were developed for hazardous wastes, but an analysis of the full set of technical requirements under subparts I and J shows that they are comparable to product storage standards from a number of sources, including regulations promulgated under the Occupational Safety and Health Act (OSHA), DOT, and industry standards, and may also be appropriate standards for storage prior to re-manufacturing.[47] Establishing technical standards equivalent to subparts I and J has the benefit of using standards that the regulated community are already familiar with, and which are designed to prevent the spent solvents from being discarded through leaks or explosions. EPA also believes that during re-manufacturing and storage prior to re-manufacturing, there should be effective controls of hazardous air emissions. This can be ensured by requiring that equipment, vents, and tanks meet the technical standards of the National Emission Standards for Hazardous Air Pollutants (NESHAP) applicable to the sector, or absent such standards for the particular operation or piece of equipment covered by the exemption, then the standards equivalent to those found in 40 CFR part 264 or 265 subparts AA (vents), BB (equipment) and CC (tank storage).

EPA requests comment on using these standards or other alternative standards that would be appropriate for helping to demonstrate that the excluded spent solvents under the re-manufacturing exclusion are being managed as a commodity rather than being discarded.

e. *No speculative accumulation.* In addition to the other conditions, hazardous secondary materials under a re-manufacturing exclusion would still be subject to the speculative accumulation restrictions in 40 CFR 261.1(c)(8), which includes both a time limitation and a requirement that the facility be able to show that there is a feasible means of recycling/recovering the hazardous secondary material. This helps ensure that the materials are re-manufactured and not discarded.

EPA requests comment on whether these conditions are appropriate and whether there are additional conditions that should be also included in any re-manufacturing exclusion.

C. Benefits of Re-Manufacturing Exclusion

The solvents identified as possible candidates for a re-manufacturing exclusion are highly energy-intensive and carbon-intensive at their creation and destruction. Therefore, any step towards extending the useful life of these solvents (*e.g.,* re-manufacturing via distillation) significantly reduces the energy use and carbon release associated with these solvents, as well as other pollutants associated with their manufacturing and disposal.[48] Using solvents multiple times instead of once means fewer solvents need to be produced and destroyed, which reduces the energy consumed for solvent production and destruction. That is, less fuel is needed to re-manufacture solvents than to produce solvents from virgin materials. The reduction in fuel for manufacturing is significant because solvent manufacture is energy intensive due to a combination of the high and low temperature manufacturing steps involved. Also, less fuel is needed to destroy solvents (at very high temperatures) if fewer solvents are being

[46] U.S. EPA *An Assessment of Environmental Problems Associated With Recycling of Hazardous Secondary Materials* (EPA–HQ–RCRA–2002–0031–0355).

[47] U.S. EPA *Equivalent Containment Standards for the Re-manufacturing Exclusion,* June 2011.

[48] U.S. EPA *Benefits of the Re-manufacturing Exclusion,* June 2011.

destroyed. Lastly, less pollution, including carbon, is released from the solvents themselves when incinerated or burned as fuel at the end of their useful life if fewer solvents are being incinerated or burned.[49]

There is also a benefit of reduced transportation impacts associated with extending the useful life of solvents. EPA research indicates that in numerous instances the transport involved in transferring a quantity of spent solvents for purposes of re-manufacturing (including any delivery to secondary users) is measurably less than the transport required for an equal quantity of solvents disposed of and replaced with new solvents.[50] In addition, transportation impacts of virgin feedstocks would also be reduced. Thus, allowing hazardous secondary material generators to re-manufacture solvents is also likely to reduce the risks to communities by reducing the likelihood of transportation accidents involving hazardous materials, as well as reducing other adverse environmental impacts from fuel consumed in transportation.

Further, reduced manufacturing of virgin solvents would reduce the quantity of ingredients needed and the toxic and hazardous pollutant releases associated with solvent manufacture. Moreover, a re-manufacturing exclusion would create a business-case incentive for hazardous secondary material generators to re-manufacture solvents. Reducing the economic barriers to solvent re-manufacturing (in particular, avoiding the costs associated with RCRA permitting) would make it commercially feasible for more chemical manufacturers to re-manufacture solvents, and would thus serve to encourage chemical manufacturers to reduce the overall environmental impacts of solvent manufacturing and use.

Finally, the benefit of limiting the functions of re-manufactured material to those performed by chemical manufacturers, processors, and formulators is that there are existing commercial purposes for re-manufactured solvents, which would limit or prevent the over-accumulation of the spent solvents, which also reduces the likelihood for discard.

[49] U.S. EPA *Benefits of the Re-manufacturing Exclusion,* June 2011.

[50] U.S. EPA *Benefits of the Re-manufacturing Exclusion,* June 2011.

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D. Potential Rulemaking Variance Process To Add Candidates for Re-Manufacturing Exclusion

EPA is requesting comment in today's proposal on a re-manufacturing exclusion that is narrowly defined to apply to 18 solvents used for specific functions within four industry sectors. However, it is possible that other hazardous secondary materials, industry sectors, and/or functional uses may also be suitable candidates for the re-manufacturing exclusion if they involve the transfer of a higher-value hazardous secondary material from one manufacturer to another, for the purpose of re-manufacturing a material with significant commercial value. If the Agency were to promulgate a re-manufacturing exclusion, EPA is requesting comment on whether to also include a specific petition process where petitioners may apply to EPA to request a hazardous secondary material, industry sector, and/or functional use be added to the exclusion.

The petition process would be similar to 40 CFR 260.20, where any person may petition the Administrator to modify or revoke any provisions of the hazardous waste rules. Thus, in the context of a re-manufacturing exclusion, any person would be able to petition the Administrator to add or remove hazardous secondary materials, industry sectors, and/or specific use functions to the list of hazardous secondary materials qualifying for this exclusion. To be successful, the petitioner would need to demonstrate to the satisfaction of the Administrator that the proposed regulatory amendment (1) meets the goal of the re-manufacturing exclusion, which is to encourage sustainable materials management by extending the productive life of a hazardous secondary material; (2) involves the transfer of a higher-value hazardous secondary material from one manufacturer to another for the purpose of re-manufacturing the hazardous secondary material to produce a product of significant commercial value; and, (3) results in neither the hazardous secondary materials nor the products recovered being discarded when the conditions of the exemption are followed. The application could be required to include (1) the petitioner's name and address; (2) a statement of the petitioner's interest in the proposed action; (3) a description of the proposed action, including the specific hazardous secondary material, industry (*i.e.,* NAICS code) and functional use (*i.e.,* industrial functional code listed in 40 CFR 710.52(c)(4)(i)(C)); and (4) a statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

Under this possible petition process, the Administrator would make a tentative decision to grant or deny a petition and then publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the **Federal Register** for written public comment. The Administrator could, at his discretion, hold an informal public hearing to consider oral comments on the tentative decision.

After evaluating all public comments, the Administrator would make a final decision by publishing in the **Federal Register** a regulatory amendment or a denial of the petition.

E. Other Issues Related to a Possible Re-Manufacturing Exclusion

A re-manufacturing exclusion, as described above, would be based on a direct business arrangement between the hazardous secondary material generator of spent solvents and the re-manufacturer, such that the spent solvents would be shipped directly from the generator to the re-manufacturer. Therefore, EPA does not believe that it would be necessary or appropriate to include intermediate storage facilities in the exclusion. We also believe that including such intermediate storage facilities would make it harder to keep track of the hazardous secondary materials and would increase storage time frames, potentially increasing the likelihood that the hazardous secondary materials will not be safely recycled. However, the Agency also recognizes that not allowing intermediate storage facilities to be part of the transaction may have an adverse impact on small businesses since such intermediate storage facilities would allow small businesses to ship their spent solvent, that are likely generated in limited quantities, to the intermediate facility for consolidation before they go to the re-manufacturer. Thus, EPA requests comment on this issue.

Similarly, EPA anticipates that re-manufacturing arrangements would be made within the United States, so that the companies involved would be governed by the same set of laws and regulations as far at their re-manufacturing agreements are concerned. EPA requests comment on limiting the re-manufacturing exclusion to the United States, or requiring the generator to notify the receiving country through EPA and obtain consent from that country before shipment of the

hazardous secondary materials takes place. These notice and consent requirements, which would be the same as those currently required under the transfer-based exclusion (see 40 CFR 261.4(a)(25)), would provide notification to the receiving country so that it can ensure that the hazardous secondary materials are reclaimed rather than disposed of or abandoned. As an additional benefit, these requirements would allow the receiving country the opportunity to consent or refuse consent based on its analysis of whether the re-manufacturing facility can properly manage the hazardous secondary materials in an environmentally sound manner within its borders.

EPA also requests comment on other possible conditions that could be added to any re-manufacturing exclusion. In particular, EPA requests comment on whether it should require the re-manufacturer to have financial assurance. EPA required financial assurance for recyclers under the transfer-based exclusion. Since the re-manufacturing exclusion will be limited to higher-value solvents going to manufacturers with a greater flexibility than commercial recyclers to adjust to unstable markets, there may be less of a need for financial assurance under this proposed exclusion. However, EPA requests comment on whether financial assurance should nevertheless be included as a condition to best ensure against discard. EPA also requests comment on whether it should add public participation requirements and/or a regulatory agency approval (short of a RCRA permit) before a re-manufacturer may start handling hazardous secondary materials sent from another company. EPA received input during its environmental justice review of the 2008 DSW final rule that the absence of an opportunity for public input was a deficiency of the transfer-based exclusion. However, since the re-manufacturing exclusion will be limited to manufacturing facilities, typically at their already existing locations, and actually may reduce the environmental impacts at such facilities, the need for public participation may be less. However, EPA requests comment on whether it should nevertheless require a public participation process to ensure that neighbors of a facility are aware that it will be handling hazardous secondary materials sent from other companies, and have input about how the protective conditions required by the proposed exclusion will be met. Finally, EPA requests comment on whether companies should be required to keep records and/or report to EPA about the environmental benefits (*e.g.,* reduced air emissions, energy savings, reduced transportation impacts) that are realized through their use of the re-manufacturing exclusion. EPA could then use this information to measure performance of the exclusion, enable public reporting of results, and facilitate information transfer in which other companies can learn how to achieve similar benefits. Additionally, we note that many companies already take advantage of reporting tools in order to track progress towards corporate sustainability goals and thus we believe that reporting would not pose an undue burden on facilities.

XIII. Request for Comment on Revisions to Other Recycling Exclusions and Exemptions

A. Background Information on Other Recycling Exclusions and Exemptions

As part of the 2008 DSW rulemaking, EPA developed a report, ''An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials'' (environmental problems study), which analyzed 218 recycling damage cases.[51] The goal of the environmental problems study was to identify and characterize environmental problems that have been attributed to hazardous secondary materials recycling activities. EPA then used the findings from this study to craft a number of conditions for the 2008 DSW final rule, which were specifically designed to target the major causes of damage and thus help define ''discard'' of hazardous secondary materials. These conditions, however, were applied only to the 2008 DSW exclusions. In developing today's proposal, we are interested in whether these conditions should be codified for the pre-2008 recycling exclusions and exemptions.

As part of the ''Environmental Justice Analysis of the Definition of Solid Waste Rule'' (EJ analysis), EPA reviewed and analyzed each damage case in the environmental problems study, including five additional damage cases that were identified after the 2008 DSW final rule was promulgated, and determined the regulatory provision that likely, or potentially, governed the management of the hazardous secondary materials. This analysis was based on the type of hazardous secondary material and the date of the damage case (related to the effective date of the regulatory provision), the results which can be found in the docket for this rulemaking.[52]

From this analysis, we conclude that over half of the damage cases in this study were associated with hazardous secondary materials that were likely excluded or exempted from Subtitle C under an existing (pre-2008) regulatory provision. For example, 52 damage cases (23%) are associated with scrap metal that is likely excluded under 261.4(a)(13) and/or 261.6(a)(3)(ii). Drum reconditioning accounted for 23 damage cases (10%), in which the residuals are likely excluded under 40 CFR 261.7. Additionally, 35 damage cases (16%) were associated with recycling of batteries that are likely managed under 40 CFR 273.2 and/or 40 CFR part 266 subpart G. Based on these results, and given that many of the pre-2008 recycling exclusions specify limited or no conditions, we believe that these provisions may not be adequately enforceable in order to protect human health and the environment. Thus, we are requesting comment today on codifying specific conditions for these recycling exclusions.

EPA emphasizes that we are not reopening comment on any substantive provisions of the regulatory exclusions or exemptions. The inclusion of requirements for legitimacy, containment, and notification are strictly meant as means to better enforce the regulations. Moreover, EPA believes that the containment condition—as with the legitimacy criteria—is implicit in all of the regulations to which it would apply. If secondary material is not contained when it is being recycled, it is simply being discarded.

As part of the 2008 DSW final rulemaking, we reviewed the recycling studies and public comments in order to develop conditions that defined discard of hazardous secondary materials. Four conditions required for the generator-controlled exclusion in 40 CFR 261.4(a)(23)—legitimate recycling, no speculative accumulation, containment, and notification—constitute what we believe to be the minimum requirements necessary to define when recycled

[51] The original environmental problems study, published January 11, 2007, reviewed 208 damage cases. Based on information submitted by commenters, EPA reviewed an additional 10 recycling damage cases in an addendum to the environmental problems study, published July 14, 2008.An Assessment of Environmental Problems Associated with Recycling of Hazardous Secondary Materials, U.S. EPA, January 11, 2007 and addendum. Report: *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064801f3efb.* Addendum (July 2008): *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=09000064806b5741,* Addendum (June 2011) found in today's docket.

[52] U.S. EPA *Correlation of Recycling Damage Cases with Regulatory Exclusions, Exemptions or Alternative Standards.*

hazardous secondary materials are not discarded. Therefore, it seems prudent to review past exclusions and exemptions to ensure these regulatory provisions clearly require these newly codified standards.

Specifically, we are requesting comment on codifying the legitimate recycling standard in 40 CFR 260.43, additional recordkeeping requirements in the speculative accumulation standard in 40 CFR 261.1(c)(8), the contained standard in 40 CFR 260.10, and the notification provision in 40 CFR 260.42 for 32 regulatory provisions that exclude or exempt certain types of recycling from full Subtitle C regulation. A list of these 32 regulatory provisions can be found below. The new legitimacy standard would apply to all regulatory provisions except for 40 CFR 261.7, because it involves determining whether residues in containers are regulated, and no hazardous secondary material is being reclaimed. The contained standard and notification condition would apply to all provisions, although facilities operating under provisions that already contain specific regulatory requirements would have to continue meeting those requirements. The additional recordkeeping requirements for speculative accumulation would only apply to those regulatory provisions already subject to speculative accumulation (*i.e.,* hazardous secondary material being used or reused per 261.2(e), characteristic by-products and sludges being reclaimed as noted in 40 CFR 261.2 Table 1, and the recycling-related exclusions in 40 CFR 261.4(a)), but would not apply to commercial chemical products being reclaimed (see 40 CFR 261.2 Table 1) or to recycling provisions that apply to recycling of solid or hazardous wastes (as noted in the chart below).

#—Citation	Description
260 & 261 Definition of Solid Waste	
1—260.30	Procedures for variances and non-waste determinations.
2—261.2 (e)	Use/Reuse.
3—261.2 Table 1	Characteristic sludges being reclaimed.
4—261.2 Table 1	Characteristic by-products being reclaimed.
5—261.2 Table 1	Commercial chemical products being reclaimed.
261.4(a) Exclusions from the Definition of Solid Waste	
6—261.4(a)(6)	Pulping Liquors.
7—261.4(a)(7)	Spent Sulfuric Acid.
8—261.4(a)(8)	Closed-Loop Recycling.
9—261.4(a)(9)	Spent Wood Preservatives.
10—261.4(a)(10)	Coke By-Product Wastes.
11—261.4(a)(11)	Splash Condenser Dross Residue.
12—261.4(a)(12)	Hazardous Oil-Bearing Secondary Materials and Recovered Oil from Petroleum Refining Operations.
13—261.4(a)(13)	Processed Scrap Metal.
14—261.4(a)(14)	Shredded Circuit Boards.
15—261.4(a)(16)	Comparable Fuels.
16—261.4(a)(17)	Mineral Processing Spent Materials.
17—261.4(a)(18)	Petrochemical Recovered Oil.
18—261.4(a)(19)	Spent Caustic Solutions from Petroleum Refining.
19—261.4(a)(20)	Hazardous Secondary Materials Used to Make Zinc Fertilizers.
20—261.4(a)(21)	Zinc Fertilizers Made from Recycled Hazardous Secondary Materials.
21—261.4(a)(22)	Used Cathode Ray Tubes (CRTs).
261.4(b) Solid wastes which are not hazardous wastes	
22—261.4(b)(12)	Spent Chlorofluorocarbon Refrigerants.
23—261.4(b)(14)	Used Oil Distillation Bottoms used to manufacture asphalt products.
261.6 Requirements for recyclable materials (hazardous wastes)	
24—261.6(a)(3)(ii)	Scrap metal.
25—261.6(a)(3)(iii)	Waste-derived fuels from refining processes.
26—261.6(a)(3)(iv)	Unrefined waste-derived fuels and oils from petroleum refineries.
27—261.6(c)(2)	Reclaimers that do not store.
261.7 Residues of hazardous waste in empty containers	
28—261.7	Residues of hazardous waste in empty containers.
Part 266 Standards for the Management of Specific Hazardous Wastes	
29—266 Subpart C	Recyclable Materials Used in a Manner Constituting Disposal.
30—266 Subpart F	Materials Utilized for Precious Metal Recovery.
31—266 Subpart G	Spent Lead-Acid Batteries Being Reclaimed.
32—266 Subpart H	Hazardous Waste Burned in Boilers and Industrial Furnaces.

Note that the possible changes discussed below would be in addition to the proposed application of the definition of legitimacy to all recycling, discussed in Section X of this preamble, and the request for comment on

additional recordkeeping for speculative accumulation, discussed in Section IX.B.2 of this preamble.

B. Possible Changes to Other Exclusions and Exemptions

1. Contained Standard

Under the 2008 DSW final rule, hazardous secondary materials must be contained, whether they are stored in land-based units or non-land-based units. Generally, such material is considered ''contained'' if it is placed in a unit that controls the movement of the hazardous secondary material out of the unit and into the environment. Hazardous secondary materials that are released to the environment are not destined for recycling and are clearly discarded. Additionally, hazardous secondary materials that are not contained, and have not been immediately recovered, are not being managed as valuable commodities, which is relevant to determining whether the recycling process is legitimate. Lastly, requiring that hazardous secondary materials be contained ensures that the materials are managed in a manner protective of human health and the environment.

In the environmental problems study, mismanagement of hazardous secondary materials was determined to be the cause, or one of the causes, in 11 percent of the damage cases. Since many of these damage cases have been associated with a pre-2008 recycling provision, we believe it appropriate to close this gap by specifically requiring compliance with the contained standard in 40 CFR 260.10. Of course, facilities operating under provisions that already contain management requirements would have to continue meeting those requirements.

2. Notification

Under the 2008 DSW final rule, facilities managing hazardous secondary materials are required to submit a notification prior to operating under the exclusions and by March 1 of each even-numbered year thereafter to the EPA Regional Administrator or State Director, if a state is authorized for the program, using the Site ID form, EPA Form 8700–12. The intent of this notification requirement is to provide basic information to regulatory authorities in order to enable adequate compliance monitoring and to ensure hazardous secondary materials are managed according to the exclusion and are not discarded. For example, in the notification, EPA requires facilities to include the quantity of hazardous secondary materials that will be managed under each exclusion and disclose whether certain types of hazardous secondary materials will be managed in land-based units. This information can be used to assist RCRA inspectors in determining which facilities may warrant greater oversight and provides a basis for setting enforcement priorities. Furthermore, requiring facilities to notify when they have stopped managing hazardous secondary materials allows states to follow up at those facilities and ensure that the hazardous secondary materials have not been discarded.

Notification information is collected in EPA's RCRAInfo database, which is the national repository of all RCRA Subtitle C site identification information, whether collected by a state or EPA. EPA provides public access to this information through EPA's public Web site.[53]

The 2008 DSW final rule differed from other prior exclusions because it required facilities claiming the exclusion to notify EPA, or the authorized state, using an established EPA form (*i.e.,* the Site ID form) and required facilities to re-notify every two years. Together, these requirements provide regulatory authorities with regularly updated data in a consistent format that enables them to collect, store, access, use, and publicly share information about these facilities. In contrast, many of the pre-2008 DSW recycling exclusions and exemptions do not contain any notification requirement and the few provisions that do require notification do not require a specific format for submitting the information or periodic updates. This results in facilities providing information in various forms, such as letters, which makes it difficult for regulatory authorities to share and use the information.

Additionally, a one-time notification requirement has limited value. With a one-time notification approach, there is no assurance that the information collected in EPA's databases over time will accurately reflect facilities that are managing hazardous secondary materials according to the exclusions. Therefore, the Agency can imagine instances where extensive resources are required to be spent on 'cleaning up' the data before regulatory authorities can use it to identify facilities who are currently managing hazardous secondary materials under the exclusions. With a one-time notification, we can also foresee problems where regulatory agencies spend time and resources monitoring compliance at facilities that have since stopped managing hazardous secondary materials at some point in the past. This inefficient use of resources would lower the overall effectiveness of regulators' ability to monitor compliance and could potentially increase the risk of environmental damage from abuse.

In the time since the 2008 DSW final rule became effective, we have received more than 40 notifications from facilities managing hazardous secondary materials under the generator-controlled and/or transfer-based exclusions. This information has directly enabled regulatory authorities to monitor compliance and assist implementation via guidance materials and training. Additionally, notification has had the added benefit of identifying facilities that planned to manage hazardous secondary materials under the rule, but were, in fact, ineligible for the exclusions. (For example, we have received notifications from facilities located in a state that had not adopted the 2008 DSW final rule.) Notification in these instances allowed regulatory authorities to identify problems and to intervene early to prevent potential mismanagement.

In the case of the many of the pre-2008 recycling exclusions and exemptions, we do not require notification (and even in those instances where we require notification, it is a one-time notification) and thus have no reliable or efficient way to receive information that enables regulatory authorities to adequately monitor these exclusions and exemptions. We believe this gap increases the risk of environmental damage stemming from improper management of hazardous secondary materials being recycled. We, therefore, are requesting comment on whether to require notification for those facilities operating under pre-2008 recycling exclusions and exemptions.

Specifically, we are requesting comment on codifying notification under § 260.42 for facilities managing hazardous secondary materials under the pre-2008 recycling provisions. For those exclusions and exemptions that already require a one-time notification, notification under § 260.42 would replace, and not duplicate, the one-time notification requirement.

XIV. Effect of This Proposal on Other Programs

A. Effect on Permitted and Interim Status Facilities

In the 2008 DSW final rule, EPA discussed how that rule would affect permitted and interim status facilities.

[53] *http://www.epa.gov/epawaste/hazard/dsw/impresource.htm.*

Specifically, the Agency explained that permitted and interim status disposal facilities that manage hazardous wastes excluded under the 2008 DSW final rule are affected by the final rule in a number of ways, depending on the situation at the facility. (74 FR 64715–7) If a permitted facility seeks to either terminate its operating permit or to remove units from its permit as a result of the 2008 DSW final rule, a facility must submit a Class I permit modification request with prior Agency approval; however, the obligation to address facility-wide corrective action remains in effect. Similarly, for facilities operating under interim status, the owner or operator retains responsibility for unaddressed corrective action obligations at the facility.

However, if EPA finalizes today's proposal to replace the transfer-based exclusion with an alternative Subtitle C regulatory approach, EPA anticipates that the number of permitted and interim status facilities that are able to take advantage of the exclusion would be significantly reduced, because most of the permitted and interim status facilities affected by the 2008 final rule are excluded under the transfer-based exclusion. Furthermore, if EPA finalizes the re-manufacturing exclusion discussed in Section XII of this preamble, the Agency would not expect TSDFs to be affected, since that exclusion would be limited to manufacturers. Regardless of the ultimate scope of the exclusion, however, facilities with units covered by the exclusion should continue to refer to the preamble in the 2008 final rule (at FR 64715–17) for a discussion of the effect of the exclusion on permitted and interim status facilities.

B. Effect on CERCLA

In 1999, Congress enacted the Superfund Recycling Equity Act (SREA), explicitly defining those hazardous substance recycling activities that may be exempted from liability under CERCLA (CERCLA section 127). Today's proposal, if finalized, would not change the universe of recycling activities that could be exempted from CERCLA liability pursuant to CERCLA section 127. The proposal would only change the definition of solid waste for purposes of the RCRA Subtitle C requirements. The proposal also would not limit or otherwise affect EPA's ability to pursue potentially responsible persons under section 107 of CERCLA for releases or threatened releases of hazardous substances.

C. Effect on the Derived-From Rule

In the 2008 DSW final rule (October 30, 2008, 73 FR 64692), EPA notes that the ''derived from'' rule articulated in 40 CFR 261.3(c)(2) does not apply to residuals from the reclamation of hazardous secondary materials excluded under the generator-controlled and transfer-based exclusions. These residuals are a new point of generation for the purposes of applying the hazardous waste determination requirements of 40 CFR 262.11. If the residuals exhibit a hazardous characteristic, or they themselves are a listed hazardous waste, they would be considered hazardous wastes (unless otherwise exempted) and would have to be managed accordingly. If they did not exhibit a hazardous characteristic, or were not themselves a listed hazardous waste, they would have to be managed in accordance with applicable state or Federal requirements for non-hazardous wastes. EPA believes that in most cases, this would not be an issue because residuals from hazardous secondary material reclamation that may be of concern would either themselves be listed hazardous waste (*i.e.*, still bottoms from the reclamation of solvents listed in 40 CFR 261.31) or would exhibit a characteristic (*i.e.*, residuals from metals reclamation with hazardous metals concentrations above the toxicity characteristic in 40 CFR 261.24). EPA requests comment, including for any available data, on the hazardousness of reclamation residuals and whether the derived-from rule would need to be modified to regulate these residuals as hazardous waste.

D. Effect on Spent Petroleum Catalysts

In the 2008 DSW final rule, EPA deferred the question of whether spent petroleum catalysts should be eligible for the exclusions pending further consideration of the pyrophoric properties of the spent petroleum catalysts (73 FR 64714). EPA noted that the Agency was planning to propose—in a separate rulemaking from the 2008 DSW final rule—an amendment to its hazardous waste regulations to conditionally exclude from the definition of solid waste spent hydrotreating and hydrorefining catalysts generated in the petroleum refining industry when these hazardous secondary materials are reclaimed. Spent hydrotreating and hydrorefining catalysts generated in the petroleum refining industry are routinely recycled by regenerating the catalyst so that it may be used again as a catalyst. When regeneration is no longer possible, these spent catalysts are either treated and disposed of as listed hazardous wastes or sent to RCRA-permitted reclamation facilities, where metals, such as vanadium, molybdenum, cobalt, and nickel are reclaimed from the spent catalysts. EPA originally added spent hydrotreating and hydrorefining catalysts (waste codes K171 and K172) to the list of RCRA hazardous wastes found in 40 CFR 261.31 on the basis of toxicity (*i.e.*, these materials were shown to pose unacceptable risk to human health and the environment when mismanaged) (63 FR 42110, August 6, 1998). In addition, EPA based its decision to list these materials as hazardous due to the fact that these spent catalysts can at times exhibit pyrophoric properties (*i.e.*, can ignite spontaneously in contact with air).

It was largely because of these pyrophoric properties that the petroleum catalysts exhibit that EPA deferred the question of whether spent petroleum catalysts should be included in the 2008 DSW final rule exclusions. While spent petroleum catalysts can be a valuable source of recoverable metals, the risk of these hazardous secondary materials spontaneously igniting when in contact with air is not a property that most metal recyclers would be expected to address, and thus, present additional risks that are not presented by other types of metal-bearing hazardous secondary materials and are therefore may be most appropriately managed as hazardous waste when recycled.

Under today's proposal, EPA is proposing to replace the transfer-based exclusion with an alternative Subtitle C regulatory approach, and if finalized, would make the question of the eligibility of most types of spent catalyst recycling for the 2008 DSW final rule exclusions moot.[54] However, EPA is also proposing to add a regulatory definition of the ''contained'' standard which includes a requirement to address the risk of fires and explosions. This provision, if properly implemented, could address the pyrophoric properties of the spent petroleum catalysts (as well as other types of ignitibility or reactivity). EPA requests comment on whether this provision would adequately address the potential for discard of spent petroleum catalysts due to fire and explosions, thereby allowing EPA to remove the ineligibility of K171 and K172 from the DSW exclusion, and on other regulatory options, including adding more conditions (such as specific container

[54] The spent catalysts would be eligible for the alternative Subtitle C regulations discussed in Section VIII of this preamble.

standards) specific to pyrophoric materials to the exclusion.

XV. Implementation Issues With 2008 DSW Final Rule

The 2008 DSW final rule became Federally effective on December 29, 2008. The rule was effective immediately in states and territories for which EPA manages the RCRA program, specifically Alaska, Iowa, the U.S. Virgin Islands, the Northern Mariana Islands, American Samoa, and Tribal lands. The rule does not go into effect in states that are authorized to manage their own RCRA programs unless and until the state adopts the rule. Currently, four states—Idaho, Illinois, New Jersey, and Pennsylvania—have adopted the rule. Within the states and territories where the 2008 DSW final rule is effective, more than 40 facilities have notified that they are managing hazardous secondary materials under the generator-controlled and/or the transfer-based exclusion.

EPA believes that it is important to support effective implementation of the 2008 DSW final rule in order to ensure that hazardous secondary materials are properly managed and not discarded. Our goal is to reduce the risk of mismanagement of hazardous secondary materials that may occur from misunderstanding the regulations and incorrect implementation of the requirements and conditions. To this end, we have worked with the EPA Regions and states to provide training and guidance materials for regulators and the regulated community. Since the 2008 DSW final rule was codified, there have been number of questions from states and the regulated community regarding how the rule should be implemented and how it operates in special circumstances.

Today, we are taking the opportunity to clarify these issues in the context of the 2008 DSW final rule. It should be noted that some of these implementation issues are specific to the transfer-based exclusion found at 40 CFR 261.4(a)(24), which EPA is proposing to replace with alternative management standards under Subtitle C of RCRA. If EPA finalizes this change, some of these issues would become moot.

A. Mixing of Hazardous Secondary Materials Excluded Under 40 CFR 261.4(a)(24) With Similar Hazardous Wastes [55]

One issue regards whether hazardous secondary materials excluded under 40 CFR 261.4(a)(24) can be mixed with other similar hazardous wastes within permitted units or exempt recycling units and how such mixing would affect the requirements of the generator and the reclaimer. Under § 261.4(a)(24), which covers hazardous secondary materials transferred off-site for reclamation, hazardous secondary material generators may send their materials to a facility that operates under a RCRA Part B permit or interim status standards. In this case, generators are not required to conduct reasonable efforts on the reclaimer as long as the RCRA Part B permit extends to the management of the hazardous secondary materials in question. We believe Part B permits or the interim status standards provide adequate assurance that the hazardous secondary materials will be well managed, specifically because the hazardous secondary materials are managed in units that are subject to stringent design and operating standards, the reclaimer must demonstrate financial assurance, and the materials are subject to the corrective action requirements in the event of environmental problems.

EPA understands that some reclaimers are receiving the same type of hazardous secondary materials for reclamation from multiple generators, with some amount excluded under § 261.4(a)(24) and some amount regulated as hazardous waste. The regulatory status of the material depends on how the generator who sent the materials chose to manage and transfer the materials off site. We also understand that reclaimers are interpreting § 261.4(a)(24) to mean that hazardous wastes and hazardous secondary materials must be stored in separate units and reclaimed independently of each other in order to preserve the regulatory status of the excluded material and the exclusion for the generators that transferred the hazardous secondary materials to the reclaimer.

It is clear in the 2008 DSW final rule that EPA allows hazardous secondary materials that are excluded from full Subtitle C regulation to be managed under a RCRA Part B permit or interim status standards. Managing hazardous secondary materials under a RCRA Part B permit affords further assurance that the hazardous secondary materials will be properly managed and reclaimed. Additionally, we believe that taking advantage of the existing recycling infrastructure both improves efficiency under the rule and increases opportunities for recycling.

Section 261.4(a)(24) states that the exclusion applies if the hazardous secondary materials are generated and transferred ''for the purpose of reclamation.'' Thus, a reclaimer mixing excluded hazardous secondary materials with regulated hazardous wastes of the same type may only mix the materials for the purpose of reclamation (and not for the purpose of, for example, burning for energy recovery or disposal).

Prior to mixing, the reclaimer must manage the excluded hazardous secondary materials under § 261.4(a)(24) up to the point that they mix the excluded materials with similar materials that are regulated hazardous waste. The reclaimer must comply with all applicable conditions of § 261.4(a)(24) because it is receiving hazardous secondary materials transferred for the purpose of reclamation and excluded from the definition of solid waste. The reclaimer must therefore meet the applicable conditions of the § 261.4(a)(24) exclusion, including legitimate reclamation, recordkeeping, financial assurance, containment of hazardous secondary materials, notification, and the prohibition on speculative accumulation.

A reclaimer may only mix hazardous secondary materials excluded under § 261.4(a)(24) with regulated hazardous waste for the purpose of reclamation. This can be satisfied by mixing in units that are dedicated for reclamation, such as storage units that are connected to reclamation units by hard pipes or other conveyance; storage units that are solely used to store materials prior to the reclamation process; and recycling units. Additionally, a reclaimer is not mixing for the purpose of reclamation if the reclaimer first mixes the materials and then makes a determination whether the mixture should be reclaimed or sent for burning or disposal. This determination must be made prior to mixing the excluded hazardous secondary materials with regulated hazardous wastes.

After mixing the excluded hazardous secondary materials with regulated hazardous waste, the reclaimer must manage the entire mixture as hazardous waste for the purpose of reclamation. Excluded hazardous secondary materials cannot be mixed with regulated hazardous waste and still maintain the exclusion from the definition of solid waste. If excluded hazardous secondary materials are

[55] This section restates our policy on this issue, which is published in the ''*Guidance for Mixing Hazardous Secondary Materials Received Under the 40 CFR 261.4(a)(24) Exclusion from the Definition of Solid Waste with Regulated Hazardous Wastes.*'' This guidance can be found in RCRAOnline and on our DSW Implementation Web site at *http://www.epa.gov/epawaste/hazard/dsw/impresource.htm.*

mixed with hazardous waste, the resulting mixture is a hazardous waste. This follows the general principle that RCRA applicability cannot be avoided by mixing a hazardous waste with another material.[56] Therefore, the reclaimer must comply with the standard hazardous waste regulations applicable to hazardous waste managed by an off-site reclaimer (*i.e.,* 40 CFR 261.6(c) and (d) or 40 CFR part 264 or 265). The mixture must be stored and managed in compliance with the hazardous waste regulations applicable to hazardous waste managed by an off-site reclaimer (*i.e.,* 40 CFR 261.6(c) and (d) or 40 CFR part 264 or 265). If a reclaimer mixes hazardous secondary materials and other similar hazardous wastes in a recycling unit, the mixture would be considered hazardous waste, but the unit would be generally exempt from regulation under 40 CFR 261.6(c)(2).

Mixing by the reclaimer of excluded hazardous secondary materials received under 40 CFR 261.4(a)(24) with regulated hazardous wastes does not affect the requirements applicable to generators who shipped the hazardous secondary materials, provided that the hazardous secondary materials are transferred for the purpose of reclamation and the reclaimer complies with all applicable conditions of § 261.4(a)(24) prior to mixing. Excluded hazardous secondary materials mixed with regulated hazardous wastes of the same type become hazardous waste at the point of mixing and must be managed as such after that point. Therefore, generators transferring hazardous secondary materials under § 261.4(a)(24) to a reclaimer who mixes may manage the hazardous secondary materials under the § 261.4(a)(24) exclusion (*e.g.,* longer storage times, shipping without a manifest) because the hazardous secondary materials have not yet been mixed with regulated hazardous wastes. (Of course, the generator and the reclaimer must meet all applicable conditions of § 261.4(a)(24) prior to mixing.)

B. Rejected Loads

A second issue regards shipments of hazardous secondary material transferred off-site by the generator for reclamation, but that are subsequently rejected by the reclaimer (otherwise known as ''rejected loads''). Because 40 CFR 261.4(a)(24) states that the exclusion applies if the hazardous secondary material is generated and transferred ''for the purpose of reclamation,'' EPA has received questions regarding how generators and reclaimers should handle rejected loads.

Although EPA did not explicitly address rejected loads in the preamble to the 2008 DSW final rule, we offered some guidance in our Response to Comments document for that action. Specifically, we state that if hazardous secondary materials transferred off-site for reclamation are subsequently rejected by the reclaimer, the generator can choose to send the hazardous secondary materials to another reclamation facility, provided the generator continues to comply with the conditions of the exclusion, including the speculative accumulation limits.

Prior to arranging for transport to an alternate reclamation facility, hazardous secondary material generators must make reasonable efforts to ensure the alternate reclamation facility intends to properly and legitimately reclaim the hazardous secondary material and must keep records of the off-site shipment and confirmation of its receipt as required under the 2008 DSW final rule. If a hazardous secondary material generator is unable to reclaim the hazardous secondary material in compliance with the speculative accumulation provision and the other terms of the exclusion, it must manage the materials as solid and hazardous waste according to the RCRA Subtitle C hazardous waste regulations. Furthermore, we believe the recordkeeping conditions (records of all off-site shipments and confirmations of receipt) are sufficient to ensure the hazardous secondary materials are properly managed if a rejected shipment must be returned to the hazardous secondary material generator or sent to an alternate reclamation facility.

In the event of a rejected load, generators and reclamation facilities should contact their regulatory authority in order to receive instructions on a case-by-case basis. Reclamation facilities should document their rejected loads, including information such as the EPA ID number, name, and address of the generator, the date the facility received the hazardous secondary material, a description and quantity of the material, the ultimate destination and disposition of the material, and an explanation of why the load was rejected. Additionally, we note that efforts to prevent rejected loads may help to avoid this issue altogether, for example, by sending test samples of the hazardous secondary material to a reclaimer to ensure that legitimate reclamation can be performed prior to sending the first shipment.

C. Interstate Transport

A third implementation issue regards the transport of excluded hazardous secondary materials from or to a state that has adopted the 2008 DSW final rule to or from a state that has not adopted the rule and what conditions would apply in each state. Specifically, if the originating state has adopted the 2008 DSW final rule, but the receiving (or transfer) state has not adopted the rule, the hazardous secondary materials (1) are subject to the hazardous waste requirements of the receiving state that has not adopted the rule upon reaching the border of that state (*e.g.,* manifesting requirements); (2) must go to a RCRA-permitted facility (or other authorized designated facility), and, if stored, materials must be managed in permitted storage units (or when applicable under interim status requirements); and (3) cannot go to an unpermitted recycling facility which is not a designated facility in a state that has not adopted the rule because such a facility would not meet the conditions of the exclusion (*e.g.,* financial assurance) and since the receiving state would not have adopted the exclusion.

If the originating state has not adopted the rule, but the receiving state has adopted the rule, the hazardous secondary materials (1) must be managed as regulated hazardous waste not only in the originating state, but also in the receiving state that has adopted the rule (*e.g.,* may be sent to a permitted recycling facility, in the receiving state, which has notified that it is operating under the exclusion, but must then be stored only in permitted units at that facility) and (2) would not be eligible for the exclusion because the generator in the originating state that has not adopted the rule would not meet the conditions and requirements of the exclusion. In particular, the fact that the generator would not have notified EPA that it is sending the hazardous secondary material to an excluded reclamation facility, and would not have performed a ''reasonable efforts'' audit under 40 CFR 261.4(a)(24)(v)(B) to ensure that the hazardous secondary material will be safely and legitimately reclaimed could undermine the proper implementation of the 2008 DSW exclusion.

As noted in written comments submitted in response to the May 2009 public meeting **Federal Register** Notice, some states that do not plan on adopting the 2008 DSW final rule in full would like the generators in their states to be able to send their hazardous secondary materials to facilities without RCRA permits that are operating under the 40

[56] *Horsehead Resource Development Co., Inc.* v. *EPA,* 16 F3d 1246 (February 1994).

CFR 261.4(a)(24) transfer-based exclusion in states that have adopted the rule[57] One possible solution for such a state might be to adopt the requirements applicable to generators in the 2008 DSW final rule (found in 40 CFR 261.4(a)(24)(i–v and vii)), in addition to the state's hazardous waste requirements, for those generators that wish to ship to reclaimers without RCRA permits whose operations are covered by the exclusion. In most cases, a generator following the generating state's hazardous waste requirements would also meet the 2008 DSW final rule requirements (*i.e.,* no speculative accumulation, meeting DOT transport requirements, containment, records of shipments), since the state's RCRA program requirements (*e.g.,* 90 and 180 day storage limits, manifesting requirements) would be equally or more stringent than the 2008 DSW final rule requirements), but the generator would also need to ensure that the hazardous secondary material meets the codified definition of legitimacy under 40 CFR 260.43, perform a ''reasonable efforts'' audit of the reclaimer and keep a copy of the audit for three years per 40 CFR 261.4(a)(24)(v)(B) and (C), and provide notification per 40 CFR 260.42. Thus, the hazardous secondary material would be covered both by the state hazardous waste program in the generating state that has not adopted the 2008 DSW final rule, and by the DSW transfer-based exclusion in the reclaiming state that has adopted the 2008 DSW final rule.

As discussed earlier, EPA has proposed to replace the transfer-based exclusion with an alternative Subtitle C regulation, which would possibly render this issue moot. However, EPA is interested in and requests comments on these issues of how interstate transportation should be handled, particularly whether states are interested in such a solution, if the transfer-based exclusion is retained or not, and whether it is an issue for any of the other exclusions EPA is proposing to retain or is asking for comment on today. For example, should EPA allow for the shipment of hazardous secondary materials from a state which does not adopt the 'under the control of the generator' exclusion to a state that has adopted that exclusion. If so, what additional requirements would the generating state have to adopt in order to allow for such shipments. Similarly, if a re-manufacturing exclusion is adopted, should EPA allow for the shipment of hazardous secondary materials from a state that does not adopt that exclusion to a state that adopts that exclusion. Again, what additional requirements would the generating state have to adopt in order to allow for such shipments.

D. Regulatory Status of Solvent Still Bottoms

A fourth implementation issue is whether still bottoms from the reclamation of solvents can be burned for energy recovery without invalidating the 2008 DSW final rule exclusions, which specifically does not include burning for energy recovery. Still bottoms from the reclamation of the solvents listed in 40 CFR 261.31(a) as F001–F005 are themselves listed hazardous waste and are not products of solvent reclamation. These still bottoms are a new point of generation, and they may be burned for energy recovery under the hazardous waste regulations without invalidating the exclusion.

XVI. State Authorization

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize a qualified state to administer and enforce a hazardous waste program within the state in lieu of the Federal program, and to issue and enforce permits in the state. A state may receive authorization by following the approval process described in 40 CFR 271.21 (see 40 CFR part 271 for the overall standards and requirements for authorization). EPA continues to have independent authority to bring enforcement actions under RCRA sections 3007, 3008, 3013, and 7003. An authorized state also continues to have independent authority to bring enforcement actions under state law.

After a state receives initial authorization, new Federal requirements promulgated under RCRA authority existing prior to the 1984 Hazardous and Solid Waste Amendments (HSWA) do not apply in that state until the state adopts and receives authorization for equivalent state requirements. In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), new Federal requirements and prohibitions promulgated pursuant to HSWA provisions take effect in authorized states at the same time that they take effect in unauthorized states. As such, EPA carries out HSWA requirements and prohibitions in authorized states, including the issuance of new permits implementing those requirements, until EPA authorizes the state to do so.

Authorized states are required to modify their programs only when EPA enacts Federal requirements that are more stringent or broader in scope than the existing Federal requirements.[58] RCRA section 3009 allows the states to impose standards more stringent than those in the Federal program (see also 40 FR 271.1(i)). Therefore, authorized states are not required to adopt Federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous Federal regulations or that narrow the scope of the RCRA program.

B. Effect on State Authorization of Proposed Rule

Today's notice proposes regulations that, if finalized, would not be promulgated under the authority of HSWA. Thus, the standards, if finalized, would be applicable on the effective date only in those states that do not have final authorization of their base RCRA programs. Moreover, authorized states are required to modify their programs only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program.

The revisions to the definition of solid waste being proposed today are more stringent than those promulgated under the 2008 DSW final rule, so those states which have adopted the 2008 DSW final rule would be required to modify their programs if these standards are finalized. However, when compared to the Federal program that was in place when the 2008 DSW final rule was finalized, many of today's proposed revisions would be considered less stringent (*e.g.,* the revised generator-controlled exclusion and the potential re-manufacturing exclusion) or are neither more nor less stringent (*i.e.,* the alternative Subtitle C regulations for reclaimed hazardous recyclable materials). Therefore, authorized states that have not adopted the 2008 DSW final rule would not be required to modify their programs to adopt these standards, if finalized.

However, the potential revisions to the other recycling exclusions and exemptions discussed in Section XIII of this preamble that EPA is currently

[57] Generators in states that have not adopted the 2008 DSW final rule are able to send their materials to RCRA-permitted reclaimers under hazardous waste regulations.

[58] EPA notes that decisions regarding whether a state rule is more stringent or broader in scope than the federal program are made when the Agency authorizes state programs.

requesting comment on, including codifying the legitimacy criteria for other exclusions as discussed in Section X of the preamble, would be more stringent than the current Federal hazardous waste program, and all authorized states would be required to modify their programs to adopt equivalent, consistent and no less stringent requirements. Also, the proposed changes to the standards and criteria for variances from classification as a solid waste discussed in Section XI would be more stringent than the current Federal hazardous waste program, and all authorized states which have adopted the underlying § 260.31 variance procedures would be required to modify their programs to adopt equivalent, consistent and no less stringent requirements.

XVII. Administrative Requirements for This Rulemaking

A. Executive Orders 12866 and 13563: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it is likely to ''raise novel legal or policy issues'' under section 3(f)(4) of Executive Order 12866. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

In addition, EPA prepared an analysis of the potential costs and benefits associated with this action. This analysis is contained in EPA's Regulatory Impact Analysis (RIA) document titled ''EPA's 2011 Proposed Revisions to Industrial Recycling Exclusions of the RCRA Definition of Solid Waste'' which is available for public download from the docket for this action. The RIA is briefly summarized here.

The RIA evaluates the potential future impacts of the seven proposed revisions (*i.e.,* Options 1 to 7 in the RIA) to the DSW regulatory exclusions for industrial hazardous secondary materials recycling. Six of the seven proposed revisions (*i.e.,* RIA Options 1 thru 6) could affect EPA's 2008 DSW recycling exclusions (three exclusions) involving between 662 and 3,671 facilities currently recycling or disposing industrial hazardous wastes regulated under RCRA Subtitle C without exclusions, while three of today's proposed revisions (*i.e.,* RIA Options 4, 5, and 7) in part or in whole could affect EPA's pre-2008 recycling exclusions involving an estimated 5,321 industrial facilities engaged in current RCRA-excluded recycling activities (32 exclusions).

The RIA presents a qualitative description of three categories of expected future environmental and economic benefits for the proposed revisions: (1) Reduction in future environmental damage cases associated with industrial hazardous secondary materials recycling; (2) increased environmental compliance; and (3) reduced liability, less regulatory uncertainty, and lower legal and credit costs for recycling facilities.

In aggregate, the RIA estimates the future average annualized costs to industry to comply with the seven proposed revisions at between $7.2 million to $13.1 million per year under a lower-bound state adoption scenario, which results in 13% of recycling facilities implementing the revisions, and between $7.4 million to $47.5 million per year under an upper-bound state adoption scenario, which results in 74% of recycling facilities implementing the revisions (2011$ @7% discount rate). Based on the 13% implementation scenario, netting out the $7.2 million to $13.1 million average annual future costs for the seven proposed revisions, from the 2011-updated DSW regulatory cost savings baseline of $86.7 million per year (consisting of $79.3 million per year cost savings to industry associated with the pre-2008 DSW exclusions, plus $7.4 million cost savings per year for the 13% adoption rate of the 2008 DSW recycling exclusions), yields a future average annual net cost savings for all DSW exclusions of $73.6 million to $79.5 million per year (@7% ''base case'' discount rate over 50-years 2015 to 2064).

These two alternative future implementation scenarios represent EPA's uncertainty about the future total count of state government RCRA-authorized programs which may ultimately adopt today's proposal when finalized. The lower-bound cost estimate represents an average annual future implementation rate by facilities based on the actual state government adoption rate associated with the 2008 DSW final rule. As of April 2011, four states (ID, IL, NJ, PA) have adopted the 2008 DSW final rule, five other states and territories (AK, AS, IA, NMI, VI) have adopted by EPA Regional Office administration of the RCRA regulatory program in those areas, and a total of 49 facilities have notified EPA they are managing hazardous secondary materials under the 2008 DSW final rule exclusions (divided over the 2.3 years between the date of today's action and the December 2008 effective date of the October 2008 DSW final rule, this 49 total facility count represents an average annual implementation rate of about 21 facilities per year). The upper-bound cost estimate represents hypothetical future non-adoption by all 12 authorized states that commented unfavorably on the transfer-based exclusion in the 2007 DSW proposed rule.[59] The rule was assumed to go into effect in all other states and territories. Updated information about the identity of state governments which have adopted the 2008 DSW final rule, and the total count and identity of industrial facilities which have notified EPA they are managing hazardous secondary materials under the 2008 DSW final rule exclusions, is available at EPA's ''*DSW Final Rule: Resources for Implementation''* Web page at *http://www.epa.gov/waste/hazard/dsw/impresource.htm.*

B. Paperwork Reduction Act (Information Collection Request)

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2310.02. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

The information requirements proposed for this action help ensure that (1) entities operating under the regulatory exclusions included in today's proposal are held accountable to the applicable requirements and (2) state and EPA inspectors can verify compliance when needed.

EPA estimates the total annual burden to respondents under the new paperwork requirements to be 84,590 hours and $4,456,294 in O&M costs ($10,277,107, including labor costs).

[59] The identity of the 12 states which commented unfavorably as potential adopters of the 2008 DSW final rule are listed in Exhibit 12A (pages 136 to 138) of EPA's ''Regulatory Impact Analysis'' for the 2008 DSW final rule, which is available from EPA's ''DSW Rulemakings'' Web page at *http://www.epa.gov/epawaste/hazard/dsw/rulemaking.htm#2008,* or from the Federal regulatory docket as Document ID nr. EPA–HQ–RCRA–2002–0031–0602 at *http://www.regulations.gov.*

Burden and costs continuing from the 2008 ICR include 1,046 hours and $187 O&M ($72,614, including labor costs), respectively. The total annual burden and O&M costs comparable to the 2008 ICR inventory would be 85,635 hours and $4,456,481, or 256,905 hours and $13,369,443 over three years. EPA estimates that the proposed 2011 revisions to the DSW final rule will also affect other related ICRs, increasing their annual burden and costs by 1,240 hours and $8,648 O&M ($79,392, including labor costs), respectively. The total annual respondent burden and cost as a result of the proposed rule, including impacts continuing from the 2008 ICR and impacts to associated ICRs, would be 86,876 hours and $4,465,129 O&M ($10,429,113, including labor costs), respectively.

In addition, EPA estimates the total annual burden to the government under the new paperwork requirements to be 43,863 hours and $1,707 in O&M costs ($2,385,917, including labor costs). Burden and costs continuing from the 2008 ICR include 1,107 hours and $27 in O&M ($60,225, including labor costs), respectively. The total annual burden and O&M costs comparable to the 2008 ICR inventory would be 44,971 hours and $1,734 in O&M costs, or 134,913 hours and $5,202 in O&M costs over three years. EPA estimates that the proposed 2011 revisions to the DSW rule will also affect other related ICRs, increasing their annual burden to the government by 12 hours ($481 labor costs), but no new O&M costs. The total annual burden and cost to the government as a result of the proposed rule, including impacts continuing from the 2008 ICR and impacts to associated ICRs, would be 44,982 hours and $1,734 O&M ($2,444,889, including labor costs), respectively.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–RCRA–2010–0742. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, *Attention:* Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after July 22, 2011, a comment to OMB is best assured of having its full effect if OMB receives it by August 22, 2011. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

As presented in EPA's RIA for today's proposal, the types of small entities which could potentially be directly regulated are in a wide range of up to 620 industries. For purposes of analysis, the RIA evaluated potential small business impacts in 27 NAICS code industries with the largest number of facilities potentially affected. This RIA identified the 27 industries by first looking at the count of facilities by 6-digit NAICS codes for the current population of facilities recovering hazardous secondary materials, including (1) 323110 Commercial Lithographic Printing; (2) 324110 Petroleum Refineries; (3) 325188 All Other Basic Inorganic Chemical Manufacturing; (4) 325199 All Other Basic Organic Chemical Manufacturing; (5) 325211 Plastics Material and Resin Manufacturing; (6) 325412 Pharmaceutical Preparation Manufacturing; (7) 325510 Paint and Coating Manufacturing; (8) 325998 All Other Miscellaneous Chemical Product and Preparation Mfg; (9) 326199 All Other Plastics Product Manufacturing; (10) 331111 Iron and Steel Mills; (11) 331492 Secondary Smelting, Refining & Alloying of Nonferrous Metal (except Copper, Aluminum); (12) 332312 Fabricated Structural Metal Manufacturing; (13) 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers; (14) 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; (15) 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; (16) 333415 Air Conditioning, Warm Air Heating Equipment, and Commercial and Industrial Refrigerator Equipment Manufacturing; (17) 334412 Bare Printed Circuit Board Manufacturing; (18) 334413 Semiconductor and Related Device Manufacturing; (19) Printed Circuit Assembly, (20) 336399 All Other Motor Vehicle Parts Manufacturing; (21) 336412 Bare Printed Circuit Board Manufacturing; (22) 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing; (23) 541710 Research & Development in the Physical, Engineering, and Life Sciences; (24) 562211 Hazardous Waste Treatment and Disposal; (25) 611310 Colleges, Universities and Professional Schools; (26) 622110 General Medical and Surgical Hospitals; (27) 928110 National Security.

The estimated potential average annual impact (*i.e.,* added regulatory cost) on small entities is estimated to be significantly less than 1% of annual sales for all affected small entities. The RIA estimates that under the 13% base-case adoption scenario 910 small entities could be affected by today's proposal (if promulgated) out of a total 6,497 affected small plus non-small entities (*i.e.,* 14%), and 1,274 small entities could be affected out of a total 9,102 potentially affected small plus non-small entities (*i.e.,* 14%) under the 74% upper-bound adoption scenario. These counts include facilities currently operating under the pre-2008 DSW recycling exclusions (32 exclusions), plus additional current RCRA hazardous waste recyclers which in the future could potentially operate under the 2008 DSW recycling exclusions (3 exclusions). However, these facility count estimates are based on analyses presented in EPA's RIA involving EPA's Toxic Release Inventory (TRI) database for the pre-2008 exclusions, and EPA's RCRA Hazardous Waste Biennial Report database for potential adoption of the 2008 DSW exclusions, and both databases have limitations which may make these facility count estimates inaccurate. Specifically, some of the facilities identified using the TRI database may be RCRA conditionally exempt small quantity generators

(CESQGs) which will not be affected by today's proposal (and thus may contribute to over-estimating in the RIA both small and total small plus non-small entities affected under the pre-2008 exclusions), and the BR database does not include comprehensive data on RCRA small quantity generators (SQGs) which may contribute to under-estimating in the RIA both small and total small plus non-small entities.

Based on the RIA's small entity ''sales test'' impact evaluation method, the highest estimated potential impact on any single small entity as a percentage of annual business revenues (*i.e.,* the ''sales test'' method) is estimated at 0.41%. The total number of small businesses impacted at this level is estimated at 21 small entities under the 13% base-case adoption scenario, and 30 small entities under the 74% adoption scenario, which represents 2.3% to 2.4%, respectively, of the 910 (13% scenario) to 1,274 (74% scenario) small entities which could be impacted by today's proposal.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, we continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts and suggestions on how to reduce such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any one year. Potential future annual added direct costs to state, local, and Tribal governments could include 11 administrative activities associated with a number of the options, including (1) receive, review and file biennial notifications (RIA Options 2, 4, 6, & 7); (2) receive, review and file reclamation plan (RIA Option 2); (3) receive, review and approve emergency plans (RIA Option 2); (4) receive, review and file notification of compliance regarding affected release area (RIA Option 2); (5) review RCRA permit applications and enter into database (RIA Option 2); (6) evaluate legitimacy petitions (RIA Option 4); (7) evaluate legitimacy documentation (RIA Options 4); (8) receive, review, and file re-application for variance or non-waste determination (RIA Option 5); (9) EPA provides online public access to a list (including documentation) of facilities receiving non-waste determinations (RIA Option 5); (10) petition process for re-manufacturing exclusion (RIA Option 6); and (11) other state paperwork requirements under existing paperwork requirements covering 2008 revisions to the RCRA definition of solid waste, RCRA hazardous waste manifest system requirements, hazardous waste generator standards, hazardous waste specific unit requirements and special waste processes and types, and air emission standards for tanks, surface impoundments and containers.

See the RIA for a complete description of the options and the various administrative activities. The RIA estimates that the state government share of future average annualized direct costs for the above seven implementation requirements ranges between $8.5 million and $9.1 million per year. No impacts are expected for local or Tribal governments. Because these direct costs are well below the $100 million annual direct cost threshold, this proposed rule is not subject to the requirements of sections 202 or 205 of UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The RIA for today's action presents an evaluation of whether the proposed regulatory revisions could ''impose substantial direct compliance costs'' on state or local governments. For purpose of quantitative analysis, the RIA applied a numerical method known as the ''$25 million test.'' The analysis evaluated whether annualized direct compliance costs to state or local governments potentially exceed $25 million per year. Potential future annual added direct costs to state or local governments could include 11 administrative activities associated with a number of the options, including (1) receive, review and file biennial notifications (RIA Options 2, 4, 6, & 7); (2) receive, review and file reclamation plan (RIA Option 2); (3) receive, Review and approve emergency plans (RIA Option 2); (4) receive, review and file notification of compliance regarded affected release area (RIA Option 2); (5) review RCRA permit applications and enter into database (RIA Option 2); (6) evaluate legitimacy petitions (RIA Option 4); (7) evaluate legitimacy documentation (RIA Options 4); (8) receive, review, and file re-application for variance or non-waste determination (RIA Option 5); (9) EPA provides online public access to a list (including documentation) of facilities receiving non-waste determinations (RIA Option 5); (10) petition process for re-manufacturing exclusion (RIA Option 6); and (11) other state paperwork requirements under existing paperwork requirements covering 2008 revisions to the RCRA definition of solid waste, RCRA hazardous waste manifest system requirements, hazardous waste generator standards, hazardous waste specific unit requirements and special waste processes and types, and air emission standards for tanks, surface impoundment and containers. See the RIA for a complete description of the Options and the various administrative activities. The RIA estimates that the maximum state government share of future average annualized direct costs for these implementation tasks ranges between $8.5 million and $9.1 million per year. No impacts are expected for local governments. Because these direct costs are well below the $25 million test threshold, we conclude that Executive Order 13132 does not apply to this action. However, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed action from state and local officials.

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

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

EPA has concluded that this action may have Tribal implications. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. Under the RCRA statute, the Federal government implements hazardous waste regulations directly in Indian Country. Thus, the changes to the hazardous waste regulations proposed today would not impose any direct costs on Tribal governments. In addition,

currently there are no facilities operating on land controlled by Tribal governments, but if such facilities did locate in such areas, then this action could have Tribal implications, to the extent that the proposed rule is intended to address potential adverse impacts of the 2008 DSW final rule.

EPA consulted with Tribal officials early in the process of developing this regulation to ensure they had an opportunity for meaningful and timely input into its development. Tribal representatives participated in the public meetings EPA held on the draft environmental justice methodology and noted that the census data used as the basis for the demographic analysis can undercount indigenous populations. EPA has noted this limitation in the analysis and has committed to working independently with the Tribal governments as the rulemaking moves forward to ensure their concerns have been met. EPA specifically solicits additional comment from Tribal officials on this proposed action and any Tribal implications.

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

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866. EPA has determined that this proposed rule will not have an adverse impact to children's health because it increases the level of environmental protection for all affected populations, including children. This action's health assessment are contained in Section VI of this preamble (as the hazard characterization portion of the environmental justice analysis). The public is invited to submit comments or identify peer-reviewed studies and data that assess effects of early life exposure to hazardous secondary materials being reclaimed.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. As defined in Executive Order 13211, a ''significant energy action'' is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1) Is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action. This rule does not involve the supply, distribution, or use of energy and is not a significant regulatory action under Executive Order 12866. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

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

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Environmental Justice

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. The purpose of this proposal is to revise the 2008 DSW final rule in such a way that reduces potential adverse impacts, including potential disproportionate impacts to minority and low-impact communities. See Section VI. for further discussion of the environmental justice analysis that was conducted for this proposed rule, a copy of which is included in the docket to today's proposed rule. In addition, the environmental justice analysis was subject to peer review. Copies of the peer review comments that EPA received, as well as how EPA responded to those comments are also in the docket to this proposal. EPA requests comments on EPA's environmental justice analysis, and whether there remains any potential adverse impacts of the proposed rule, including disproportionate impacts to minority and low-income communities, that is within the Agency's discretion to address.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Solid Waste, Recycling.

40 CFR Part 266

Environmental protection, Hazardous Waste, Recycling.

Dated: June 30, 2011.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6935, 6937, 6938, 6939 and 6974.

Subpart B—Definitions

2. Amend § 260.10 as follows:

a. Remove the definition of ''hazardous secondary material generated and reclaimed under the control of the generator,''

b. Add in alphabetical order the definition of ''contained'' to read as follows:

§ 260.10 Definitions.

* * * * *

Contained means a unit (including a land-based unit as defined in this

subpart) that meets the following criteria:

(1) The unit is in good condition, with no leaks or other continuing or intermittent unpermitted releases of the hazardous secondary materials to the environment, and is designed, as appropriate for the hazardous secondary materials, to prevent releases of hazardous secondary materials to the environment. Such releases may include, but are not limited to, releases through surface transport by precipitation runoff, releases to groundwater, wind-blown dust, fugitive air emissions, and catastrophic unit failures;

(2) The unit is properly labeled or otherwise has a system (such as a log) to immediately identify the hazardous secondary materials in the unit; and

(3) The unit does not hold incompatible materials and addresses any potential risks of fires or explosions. Hazardous secondary materials in units that meet the applicable requirements of 40 CFR parts 264 or 265 are considered to be contained.

* * * * *

Subpart C—Rulemaking Petitions

3. Section 260.30 is amended by revising the introductory text to read as follows:

§ 260.30 Non-waste determinations and variances from classification as a solid waste.

In accordance with the standards and criteria in § 260.31 and § 260.34 and the procedures in § 260.33, the Regional Administrator may determine on a case-by-case basis that the following recycled materials are not solid wastes:

* * * * *

4. Amend § 260.31 as follows:

a. Revise the introductory text of paragraphs (a) and (b);

b. Revise paragraph (c).

§ 260.31 Standards and criteria for variances from classification as a solid waste.

(a) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that are accumulated speculatively without sufficient amounts being recycled if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. If a variance is granted, it is valid only for the following year, but can be renewed, on an annual basis, by filing a new application. The Regional Administrator's decision will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and the following criteria:

* * * * *

(b) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated if the reclamation operation is an essential part of the production process. This determination will be based on whether the hazardous secondary material is legitimately reclaimed as specified in § 260.43 and the following criteria:

* * * * *

(c) The Regional Administrator may grant requests for a variance from classifying as a solid waste those materials that have been partially reclaimed but must be reclaimed further before recovery is completed, if the partial reclamation has produced a commodity-like material. A determination that a partially reclaimed material for which the variance is sought is commodity-like will be based whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on whether all of the following decision criteria are satisfied:

(1) Whether the degree of partial reclamation the material has undergone is substantial;

(2) Whether the partially-reclaimed material has sufficient economic value that it will be purchased for final reclamation;

(3) Whether the partially-reclaimed material is a viable substitute for a product or intermediate produced from virgin or raw materials which feeds subsequent production steps;

(4) Whether there is a guaranteed end market for the partially-reclaimed material;

(5) Whether the partially-reclaimed material is handled to minimize loss.

5. Section 260.32 is amended by revising the introductory text to read as follows:

§ 260.32 Variances to be classified as a boiler.

In accordance with the standards and criteria in § 260.10 (definition of ''boiler''), and the procedures in § 260.33, the Regional Administrator may determine on a case-by-case basis that certain enclosed devices using controlled flame combustion are boilers, even though they do not otherwise meet the definition of boiler contained in § 260.10, after considering the following criteria:

* * * * *

6. Section 260.33 is revised to read as follows:

§ 260.33 Procedures for variances from classification as a solid waste, for variances to be classified as a boiler, for legitimacy variances, or for non-waste determinations.

The Regional Administrator will use the following procedures in evaluating applications for variances from classification as a solid waste, applications to classify particular enclosed controlled flame combustion devices as boilers, applications for legitimacy variances, or applications for non-waste determinations.

(a) The applicant must apply to the Regional Administrator for the variance or non-waste determination. The application must address the relevant criteria contained in § 260.31, § 260.32, § 260.34, or § 260.43 as applicable.

(b) The Regional Administrator will evaluate the application and issue a draft notice tentatively granting or denying the application. Notification of this tentative decision will be provided by newspaper advertisement or radio broadcast in the locality where the recycler is located, and be made available on EPA's Web site. The Regional Administrator will accept comment on the tentative decision for 30 days, and may also hold a public hearing upon request or at his discretion. The Regional Administrator will issue a final decision after receipt of comments and after the hearing (if any).

(c) In the event of a change in circumstances that affect how a hazardous secondary material meets the relevant criteria contained in § 260.31, § 260.32, § 260.34 or § 260.43 upon which a variance or non-waste determination has been based, the applicant must re-apply to the Regional Administrator for a formal determination that the hazardous secondary material continues to meet the relevant criteria and therefore is not a solid waste.

(d) Facilities receiving a variance or non-waste determination must provide notification as required by § 260.42 of this chapter.

7. Amend § 260.34 as follows:

a. Revise the introductory text of paragraph (a);

b. Revise the introductory text of paragraph (b), and paragraph (b)(4);

c. Revise the introductory text to paragraph (c), and paragraph (c)(5).

§ 260.34 Standards and criteria for non-waste determinations.

(a) An applicant may apply to the Regional Administrator for a formal determination that a hazardous

secondary material is not discarded and therefore not a solid waste. The determinations will be based on the criteria contained in paragraphs (b) or (c) of this section, as applicable. If an application is denied, the hazardous secondary material might still be eligible for a solid waste variance or exclusion (for example, one of the solid waste variances under § 260.31). Determinations may also be granted by the State if the State is either authorized for this provision or if the following conditions are met:

* * * * *

(b) The Regional Administrator may grant a non-waste determination for hazardous secondary material which is reclaimed in a continuous industrial process if the applicant demonstrates that the hazardous secondary material is a part of the production process and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

* * * * *

(4) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.

(c) The Regional Administrator may grant a non-waste determination for hazardous secondary material which is indistinguishable in all relevant aspects from a product or intermediate if the applicant demonstrates that the hazardous secondary material is comparable to a product or intermediate and is reclaimed and is not discarded. The determination will be based on whether the hazardous secondary material is legitimately recycled as specified in § 260.43 and on the following criteria:

* * * * *

(5) Other relevant factors that demonstrate the hazardous secondary material is not discarded, including why the hazardous secondary material cannot meet, or should not have to meet, the conditions of an exclusion under § 261.2 or § 261.4 of this chapter.

8. Amend § 260.42 as follows:

a. Revise the introductory text to paragraph (a), and paragraphs (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8) and (a)(9);

b. Remove paragraph (a)(10);

c. Revise paragraph (b).

§ 260.42 Notification requirement for hazardous secondary materials.

(a) Facilities managing hazardous secondary materials or hazardous recyclable materials under §§ 260.30, 261.4(a)(23) or part 266 subpart D must send a notification prior to operating under the regulatory provision and by March 1 of each even-numbered year thereafter to the Regional Administrator using EPA Form 8700–12 that includes the following information:

(1) The name, address, and EPA ID number of the facility;

* * * * *

(4) The regulation under which the hazardous secondary materials will be managed;

(5) When the facility began or expects to begin managing the hazardous secondary materials in accordance with the regulation;

(6) A list of hazardous secondary materials that will be managed according to the exclusion (reported as the EPA hazardous waste numbers that would apply if the hazardous secondary materials were managed as hazardous wastes);

(7) For each hazardous secondary material, whether the hazardous secondary material, or any portion thereof, will be managed in a land-based unit;

(8) The quantity of each hazardous secondary material to be managed annually; and

(9) The certification (included in EPA Form 8700–12) signed and dated by an authorized representative of the facility.

(b) If a facility managing hazardous secondary materials has submitted a notification, but then subsequently stops managing hazardous secondary materials in accordance with the regulation(s) listed above, the facility must notify the Regional Administrator within thirty (30) days using EPA Form 8700–12. For purposes of this section, a facility has stopped managing hazardous secondary materials if the facility no longer generates, manages and/or reclaims hazardous secondary materials under the regulation(s) above and does not expect to manage any amount of hazardous secondary materials for at least one year.

9. Section 260.43 is amended by revising the section heading and paragraphs (a), (b) and (c) to read as follows:

§ 260.43 Legitimate recycling of hazardous secondary materials.

(a) Recycling of hazardous secondary materials for the purpose of the exclusions or exemptions from the hazardous waste regulations or alternate regulatory standards must be legitimate. Hazardous secondary material that is not legitimately recycled is discarded material and is a solid waste. In determining if their recycling is legitimate, persons must address all the requirements of this paragraph.

(1) Legitimate recycling must involve a hazardous secondary material that provides a useful contribution to the recycling process or to a product or intermediate of the recycling process. The hazardous secondary material provides a useful contribution if it:

(i) Contributes valuable ingredients to a product or intermediate; or

(ii) Replaces a catalyst or carrier in the recycling process; or

(iii) Is the source of a valuable constituent recovered in the recycling process; or

(iv) Is recovered or regenerated by the recycling process; or

(v) Is used as an effective substitute for a commercial product.

(2) The recycling process must produce a valuable product or intermediate. The product or intermediate is valuable if it is:

(i) Sold to a third party; or

(ii) Used by the recycler or the generator as an effective substitute for a commercial product or as an ingredient or intermediate in an industrial process.

(3) The generator and the recycler must manage the hazardous secondary material as a valuable commodity. Where there is an analogous raw material, the hazardous secondary material must be managed, at a minimum, in a manner consistent with the management of the raw material or in an equally protective manner. Where there is no analogous raw material, the hazardous secondary material must be contained. Hazardous secondary materials that are released to the environment and are not recovered immediately are discarded.

(4) The product of the recycling process:

(i) Must contain concentrations of any hazardous constituents found in Appendix VIII of part 261 of this chapter at levels that are comparable to or lower than those found in analogous products; or

(ii) Must not exhibit a hazardous characteristic (as defined in part 261 subpart C) that analogous products do not exhibit.

(b) Persons performing the recycling of hazardous secondary materials for the purpose of obtaining exclusions or exemptions from the hazardous waste regulations or alternative regulatory standards must maintain documentation of their legitimacy determination on-site.

(1) Documentation must be either a written description of how the recycling meets all four factors in § 260.43(a) or a copy of a legitimacy variance received from the person's implementing agency.

(2) Documentation must be maintained for three years after the recycling operation has ceased.

(c) An applicant may petition the Regional Administrator for a formal determination that a recycling process is legitimate without meeting the requirements under § 260.43(a)(3) or § 260.43(a)(4). The Regional Administrator will use the procedures in § 260.33 in evaluating petitions for legitimacy variances. In making a determination on a petition for a legitimacy variance, the Regional Administrator will evaluate all factors and consider legitimacy as a whole. In determining whether a process that does not meet one or both of the requirements under § 260.43(a)(3) or § 260.43(a)(4) is still legitimate, the Regional Administrator can consider the protectiveness of the storage methods, exposure from toxics in the product, the bioavailability of the toxics in the product, and any other relevant considerations.

* * * * *

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

10. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

Subpart A—General

11. Section 261.2 is amended by removing paragraph (a)(2)(ii) and by revising the introductory text to paragraph (e)(1) to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(e) * * * (1) Materials are not solid wastes when they can be shown to be legitimately recycled as specified in § 260.43 by being:

* * * * *

12. Amend § 261.4, as follows:

a. Republish the introductory text of paragraph (a);

b. Revise paragraphs (a)(6) and (a)(7);

c. Revise the introductory text to paragraph (a)(8);

d. Revise paragraphs (a)(9)(i) and (a)(9)(ii);

e. Revise paragraphs (a)(10) and (a)(11);

f. Revise the first sentence of paragraph (a)(12)(i);

g. Revise the first sentence of paragraph (a)(12)(ii);

h. Revise paragraph (a)(13);

i. Revise the introductory text of paragraph (a)(14);

j. Revise paragraph (a)(17)(i);

k. Revise the introductory text to paragraph (a)(18);

l. Revise paragraph (a)(19);

m. Revise the introductory text to paragraph (a)(20) and the introductory text to paragraph (a)(21);

n. Revise paragraph (a)(22)(ii);

o. Revise paragraph (a)(23);

p. Remove paragraphs (a)(24) and (a)(25);

q. Republish the introductory text of paragraph (b);

r. Revise paragraphs (b)(12) and (b)(14).

§ 261.4 Exclusions.

(a) *Materials which are not solid wastes.* The following materials are not solid wastes for the purpose of this part:

* * * * *

(6) Pulping liquors (*i.e.,* black liquor) that are legitimately reclaimed as specified in § 260.43 of this chapter in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(7) Spent sulfuric acid legitimately used to produce virgin sulfuric acid as specified in § 260.43 of this chapter, unless it is accumulated speculatively as defined in § 261.1(c) of this chapter.

(8) Secondary materials that are legitimately reclaimed as specified in § 260.43 of this chapter and returned to the original process or processes in which they were generated where they are reused in the production process provided:

* * * * *

(9)(i) Spent wood preserving solutions that have been legitimately reclaimed as specified in § 260.43 of this chapter and are reused for their original intended purpose; and

(ii) Wastewaters from the wood preserving process that have been legitimately reclaimed as specified in § 260.43 of this chapter and are reused to treat wood.

* * * * *

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in § 261.24 of this part when, subsequent to generation, these materials are legitimately recycled as specified in § 260.43 of this chapter to coke ovens, to the tar recovery process as a feedstock to produce coal tar, or mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before legitimate recovery as specified in § 260.43 of this chapter.

(12)(i) Oil-bearing hazardous secondary materials (*i.e.,* sludges, byproducts, or spent materials) that are generated at a petroleum refinery (SIC code 2911) and are legitimately recycled as specified in § 260.43 of this chapter by being inserted into the petroleum refining process (SIC code 2911—including, but not limited to, distillation, catalytic cracking, fractionation, gasification (as defined in 40 CFR 260.10) or thermal cracking units (*i.e.,* cokers)) unless the material is placed on the land, or speculatively accumulated before being so recycled.

* * *

(ii) Recovered oil that is legitimately recycled as specified in § 260.43 of this chapter in the same manner and with the same conditions as described in paragraph (a)(12)(i) of this section.

* * *

(13) Excluded scrap metal (processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal) being legitimately recycled as specified in § 260.43 of this chapter.

(14) Shredded circuit boards being legitimately recycled as specified in § 260.43 of this chapter provided that they are:

* * * * *

(17) * * *

(i) The spent material is legitimately recycled as specified in § 260.43 of this chapter to recover minerals, acids, cyanide, water or other values;

* * * * *

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is legitimately recycled as specified in § 260.43 of this chapter by being inserted into the petroleum refining process (SIC code 2911) along with normal petroleum refinery process streams, provided:

* * * * *

(19) Spent caustic solutions from petroleum refining liquid treating processes legitimately used as a feedstock as specified in § 260.43 of this chapter to produce cresylic or naphthenic acid unless the material is placed on the land, or accumulated speculatively as defined in § 261.1(c).

(20) Hazardous secondary materials legitimately used as specified in § 260.43 to make zinc fertilizers,

provided that the following conditions specified are satisfied:

* * * * *

(21) Zinc fertilizers legitimately made from hazardous wastes, or hazardous secondary materials that are excluded under paragraph (a)(20) of this section as specified in § 260.43 of this chapter, provided that:

* * * * *

(22) * * *

* * * * *

(ii) Used, intact CRTs as defined in § 260.10 of this chapter are not solid wastes when exported for legitimate recycling as specified in § 260.43 of this chapter provided that they meet the requirements of § 261.40.

* * * * *

(23) Hazardous secondary material generated and legitimately reclaimed under the control of the generator provided that it complies with paragraphs (a)(23)(i) and (ii) of this section:

(i)(A) The hazardous secondary material is generated and reclaimed at the generating facility (for purposes of this definition, generating facility means all contiguous property owned, leased, or otherwise controlled by the hazardous secondary material generator) or

(B) The hazardous secondary material is generated and reclaimed at different facilities, if the reclaiming facility is controlled by the generator or if both the generating facility and the reclaiming facility are controlled by a person as defined in § 260.10 of this chapter, and if the generator provides one of the following certifications: ''on behalf of [insert generator facility name], I certify that this facility will send the indicated hazardous secondary material to [insert reclaimer facility name], which is controlled by [insert generator facility name] and that [insert the name of either facility] has acknowledged full responsibility for the safe management of the hazardous secondary material''. For purposes of this paragraph, ''control'' means the power to direct the policies of the facility, whether by the ownership of stock, voting rights, or otherwise, except that contractors who operate facilities on behalf of a different person as defined in § 260.10 of this chapter shall not be deemed to ''control'' such facilities, or

(C) The hazardous secondary material is generated pursuant to a written contract between a tolling contractor and a toll manufacturer and is reclaimed by the tolling contractor, if the tolling contractor certifies the following: ''On behalf of [insert tolling contractor name], I certify that [insert tolling contractor name] has a written contract with [insert toll manufacturer name] to manufacture [insert name of product or intermediate] which is made from specified unused materials, and that [insert tolling contractor name] will reclaim the hazardous secondary materials generated during this manufacture. On behalf of [insert tolling contractor name] I also certify that [insert tolling contractor name] retains ownership of, and responsibility for, the hazardous secondary materials that are generated during the course of the manufacture, including any releases of hazardous secondary materials that occur during the manufacturing process''. The tolling contractor must maintain at its facility for no less than three years records of hazardous secondary materials received pursuant to its written contract with the tolling manufacturer, and the tolling manufacturer must maintain at its facility for no less than three years records of hazardous secondary materials shipped pursuant to its written contract with the tolling contractor. In both cases, the records must contain the name of the transporter, the date of the shipment, and the type and quantity of the hazardous secondary material shipped or received pursuant to the written contract. These requirements may be satisfied by routine business records (*e.g.,* financial records, bills of lading, copies of DOT shipping papers, or electronic confirmations). For purposes of this paragraph, tolling contractor means a person who arranges for the production of a product or intermediate made from specified unused materials through a written contract with a toll manufacturer. Toll manufacturer means a person who produces a product or intermediate made from specified unused materials pursuant to a written contract with a tolling contractor.

(ii)(A) The hazardous secondary material is generated and reclaimed within the United States or its territories.

(B) The hazardous secondary material is contained as defined in § 260.10 of this chapter. A hazardous secondary material released to the environment is discarded and a solid waste unless it is immediately recovered for the purpose of recycling. Hazardous secondary material managed in a unit with leaks or other continuing releases of the hazardous secondary material is discarded and a solid waste.

(C) The hazardous secondary material is not speculatively accumulated, as defined in § 261.1(c)(8), and the material is placed in a storage unit with a label indicating the first date that the excluded hazardous secondary material began to be accumulated. If placing a label on the storage unit is not practicable, the first date that the excluded hazardous secondary material began to be accumulated must be entered in an inventory log.

(D) Notice is provided as required by § 260.42 of this chapter.

(b) *Solid wastes which are not hazardous wastes.* The following solid wastes are not hazardous wastes:

* * * * *

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use in a manner that is legitimate as specified in § 260.43 of this chapter.

* * * * *

(14) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products in a manner that is legitimate as specified in § 260.43 of this chapter.

13. Amend § 261.6 as follows:

a. Revise paragraph (a)(1);

b. Revise the introductory text to paragraph (a)(2) and add paragraph (a)(2)(v);

c. Revise the introductory text to paragraph (a)(3);

d. Revise paragraph (c)(1) and the introductory text to paragraph (c)(2).

§ 261.6 Requirements for recyclable materials.

(a)(1) Hazardous wastes that are legitimately recycled as specified in § 260.43 of this chapter are subject to the requirements for generators, transporters, and storage facilities of paragraphs (b) and (c) of this section, except for the materials listed in paragraphs (a)(2) and (a)(3) of this section. Hazardous wastes that are legitimately recycled will be known as ''recyclable materials.''

(2) The following recyclable materials are not subject to the requirements of this section when legitimately recycled as specified in § 260.43 of this chapter but are regulated under subparts C through N of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(v) Hazardous recyclable materials transferred for reclamation (40 CFR part 266, subpart D).

(3) The following recyclable materials are not subject to regulation under parts

262 through parts 268, 270, or 124 of this chapter and are not subject to the notification requirements of section 3010 of RCRA when legitimately recycled as specified in § 260.43 of this chapter:

* * * * *

(c)(1) Owners and operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of subparts A though L, AA, BB, and CC of parts 264 and 265, and under parts 124, 266, 267, 268, and 270 of this chapter and the notification requirements under section 3010 of RCRA, except as provided in paragraph (a) of this section. (The recycling process itself is exempt from regulation as long as the recycling is legitimate as specified in § 260.43 of this chapter, except as provided in § 261.6(d).)

(2) Owners or operators of facilities that recycle recyclable materials without storing them before they are legitimately recycled are subject to the following requirements, except as provided in paragraph (a) of this section:

* * * * *

Subpart E—Exclusions/Exemptions

14. Section 261.38 is amended by adding paragraph (b)(17) to read as follows:

§ 261.38 Exclusion of comparable fuel and syngas fuel.

* * * * *

(b) * * *

* * * * *

(17) *Legitimate recycling.* Excluded fuel must be legitimately recycled as specified in § 260.43 of this chapter.

* * * * *

15. Section 261.39 is amended by revising the introductory text to read as follows:

§ 261.39 Conditional Exclusion for Used, Broken Cathode Ray Tubes (CRTs) and Processed CRT Glass Undergoing Recycling.

Used, broken CRTs are not solid wastes if they are legitimately recycled as specified in § 260.43 of this chapter and meet the following conditions:

* * * * *

16. Section 261.40 is revised to read as follows:

§ 261.40 Conditional Exclusion for Used, Intact Cathode Ray Tubes (CRTs) Exported for Recycling.

Used, intact CRTs exported for legitimate recycling as specified in § 260.43 of this chapter are not solid wastes if they meet the notice and consent conditions of § 261.39(a)(5), and if they are not speculatively accumulated as defined in § 261.1(c)(8).

17. Section 261.41 is revised to read as follows:

§ 261.41 Notification and Recordkeeping for Used, Intact Cathode Ray Tubes (CRTs) Exported for Reuse.

(a) Persons who export used, intact CRTs for legitimate reuse as specified in § 260.43 of this chapter must send a one-time notification to the Regional Administrator. The notification must include a statement that the notifier plans to export used, intact CRTs for reuse, the notifier's name, address, and EPA ID number (if applicable) and the name and phone number of a contact person.

(b) Persons who export used, intact CRTs for legitimate reuse as specified in § 260.43 of this chapter must keep copies of normal business records, such as contracts, demonstrating that each shipment of exported CRTs will be reused. This documentation must be retained for a period of at least three years from the date the CRTs were exported.

Subpart H (§§ 261.140 through 261.151)—[Removed]

18. Subpart H, consisting of §§ 261.140 through 261.151, is removed.

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

19. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart C—Recyclable Materials Used in a Manner Constituting Disposal

20. Section 266.20 is amended by revising the introductory text to paragraph (a), and paragraphs (b) and (d)(2), to read as follows:

§ 266.20 Applicability.

(a) The regulations of this subpart apply to recyclable materials that are applied to or placed on the land, provided they are legitimately recycled as specified in § 260.43 of this chapter:

* * * * *

(b) Products produced for the general public's use that are used in a manner that constitutes disposal and that contain recyclable materials are not presently subject to regulation if the recyclable materials have undergone a chemical reaction in the course of producing the products so as to become inseparable by physical means and if such products meet the applicable treatment standards in subpart D of part 268 (or applicable prohibition levels in § 268.32 or RCRA section 3004(d), where no treatment standards have been established) for each recyclable material (*i.e.,* hazardous waste) that they contain, provided they are legitimately recycled as specified in § 260.43 of this chapter.

* * * * *

(d) * * *

(2) They meet the applicable treatment standards in subpart D of part 268 of this chapter for each hazardous waste that they contain and provided they are legitimately recycled as specified in § 260.43 of this chapter.

21. Subpart D is added to part 266 to read as follows:

Subpart D—Hazardous Recyclable Materials

§ 266.30 Applicability.

(a) The regulations of this subpart apply to hazardous recyclable materials that are reclaimed as defined in § 261.1(a)(4) of this chapter. For the purposes of this subpart, a hazardous recyclable material is a hazardous waste this is being recycled.

(b) A hazardous recyclable material generator may accumulate hazardous recyclable material onsite for one year or less without a permit or without having interim status, provided that:

(1) The hazardous recyclable material generator provides notification as required by § 260.42 of this chapter;

(2) The hazardous recyclable material generator makes and documents advance arrangements for reclamation prior to operating under this subpart in a reclamation plan that:

(i) Describes the hazardous recyclable material and identifies the reclamation facility where the material will be sent,

(ii) Includes written confirmation from the facility that they are able to reclaim the hazardous recyclable material,

(iii) Documents the amount of hazardous recyclable material expected in each shipment and the anticipated frequency of shipments, and:

(iv) Documents that the reclamation is legitimate per 40 CFR 260.43;

(3) While hazardous recyclable materials are being accumulated on-site, each container and tank is labeled or marked clearly with the words, ''Hazardous recyclable material'';

(4) The hazardous recyclable material generator complies as applicable either with all requirements applicable to large quantity generators or all requirements applicable to small quantity generators, except for the 90-day storage time limit

for large quantity generators and the 180-day (or 270-day) storage time limit for small quantity generators, and except that tanks and containers need not be labeled as containing ''hazardous waste'' if they instead are labeled as containing ''hazardous recyclable materials.''

(c) Persons who transport or who store hazardous recyclable materials other than at the site of generation, prior to reclamation are subject to all applicable requirements of parts 263 through 265 and part 268 of this chapter.

Subpart F—Recyclable Materials Utilized for Precious Metal Recovery

22. Section 266.70 is amended by revising paragraph (a) to read as follows:

§ 266.70 Applicability and requirements.

(a) The regulations of this subpart apply to recyclable materials that are legitimately reclaimed as specified in § 260.43 of this chapter to recover economically significant amounts of gold, silver, platinum, palladium, iridium, osmium, rhodium, ruthenium, or any combination of these.

* * * * *

Subpart G—Spent Lead-Acid Batteries Being Reclaimed

23. Section 266.80 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 266.80 Applicability and requirements.

(a) *Are spent lead-acid batteries exempt from hazardous waste management requirements?* If you generate, collect, transport, store, or regenerate lead-acid batteries for legitimate reclamation purposes as specified in § 260.43 of this chapter, you may be exempt from certain hazardous waste management requirements. Use the following table to determine which requirements apply to you. Alternatively, you may choose to manage your spent lead-acid batteries under the ''Universal Waste'' rule in 40 CFR part 273.

* * * * *

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

24. Section 266.100 is amended by revising paragraph (a) to read as follows:

§ 266.100 Applicability.

(a) The regulations of this subpart apply to hazardous waste burned or processed in a boiler or industrial furnace (as defined in § 260.10 of this chapter) irrespective of the purpose of burning or processing, except as provided by paragraphs (b), (c), (d), (g), and (h) of this section. In this subpart, the term ''burn'' means burning for energy recovery or destruction, or processing for materials recovery or as an ingredient. The emissions standards of §§ 266.104, 266.105, 266.106, and 266.107 apply to facilities operating under interim status or under a RCRA permit as specified in §§ 266.102 and 266.103. Burning for energy recovery and processing for materials recovery or as an ingredient must be legitimate recycling as specified in § 260.43 of this chapter.

* * * * *

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 679

[Docket No. 101027534–0559–01]

RIN 0648–BA37

Pacific Halibut Fisheries; Catch Sharing Plan for Guided Sport and Commercial Fisheries in Alaska

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would implement a catch sharing plan for the guided sport and commercial fisheries for Pacific halibut in waters of International Pacific Halibut Commission (IPHC) Regulatory Areas 2C (Southeast Alaska) and 3A (Central Gulf of Alaska). If approved, this catch sharing plan will change the annual process of allocating halibut between the guided sport and commercial fisheries in Area 2C and Area 3A, establish allocations for each sector, and specify harvest restrictions for guided sport anglers that are intended to limit harvest to the annual guided sport fishery catch limit. In order to provide flexibility for individual commercial and guided sport fishery participants, the proposed catch sharing plan also will authorize annual transfers of commercial halibut quota to charter halibut permit holders for harvest in the guided sport fishery. This action is necessary to achieve the halibut fishery management goals of the North Pacific Fishery Management Council.

DATES: Written comments must be received by September 6, 2011.

ADDRESSES: Send comments to Glenn Merrill, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Ellen Sebastian. You may submit comments identified by 0648–BA37 by any one of the following methods:

- *Electronic submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.*
- *Mail:* P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* 907–586–7557.
- *Hand delivery:* 709 West 9th Street, Room 420A, Juneau, AK.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter N/A in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address and by e-mail to *OIRA_Submission@omb.eop.gov* or fax to 202–395–7285.

Electronic copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis prepared for this action are available from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov*. The Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for the charter halibut limited access program is available from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Baker, 907–586–7228.

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I. Management of the Halibut Fisheries

The IPHC and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC adopts regulations governing the Pacific halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). Regulations developed by the IPHC are subject to acceptance by the Secretary of State with concurrence from the Secretary of Commerce. After acceptance by the Secretary of State and the Secretary of Commerce, NMFS publishes the IPHC regulations in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62. The most recent IPHC regulations were published March 16, 2011, at 76 FR 14300. IPHC regulations affecting sport fishing for halibut and vessels in the guided sport (charter) fishery in Areas 2C and 3A may be found in sections 3, 25, and 28 (76 FR 14300, March 16, 2011).

The Halibut Act, at Sections 773c(a) and (b), provides the Secretary of Commerce with general responsibility to carry out the Convention and the Halibut Act. In adopting regulations that may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act, the Secretary of Commerce is directed to consult with the Secretary of the department in which the U.S. Coast Guard is operating.

The Halibut Act, at section 773c(c), also provides the North Pacific Fishery Management Council (Council) with authority to develop regulations, including limited access regulations, that are in addition to, and not in conflict with, approved IPHC regulations. Regulations developed by the Council may be implemented by NMFS only after approval by the Secretary of Commerce. The Council has exercised this authority in the development of subsistence halibut fishery management measures, codified at 50 CFR 300.65, and the limited access program for charter vessels in the guided sport fishery, codified at 50 CFR 300.67. The Council also developed the Individual Fishing Quota (IFQ) Program for the commercial halibut and sablefish fisheries, codified at 50 CFR part 679, under the authority of section 773 of the Halibut Act and section 303(b) of the

Magnuson-Stevens Fishery Conservation and Management Act (MSA) (16 U.S.C. 1801 *et seq.*).

The harvest of halibut in Alaska occurs in three basic fisheries—the commercial, sport, and subsistence fisheries. The IPHC annually determines the amount of halibut that may be removed from the resource on an area-by-area basis in all areas of Convention waters without causing biological conservation problems. The IPHC develops catch limits for the commercial sector in waters in and off Alaska. The IPHC estimates the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC calculates the amount of total allowable harvest in a given area by multiplying a harvest rate by the estimate of exploitable biomass. Referred to as the Total Constant Exploitation Yield (CEY), this target level represents the total removals for that area in the coming year. The Total CEY is expressed in net pounds, which is defined as the weight of halibut from which the gills, entrails, head, and ice and slime have been removed. The IPHC subtracts estimates of halibut removals and mortality from sources other than the directed commercial halibut fishery, including sport, subsistence, bycatch in non-halibut commercial fisheries, and halibut wastage, or discarded halibut that are smaller than the minimum legal commercial size limit of 32 inches, or 81.3 centimeters (cm), and halibut killed or lost on abandoned commercial halibut fishing gear, from the Total CEY. The remaining CEY is called the Fishery CEY. The Fishery CEY provides the basis for the IPHC's determination of catch limits for the directed commercial fixed gear halibut fishery. The IPHC considers staff recommendations, harvest policy, and stakeholder input when it determines commercial catch limits.

Pursuant to Article III of the Convention, the IPHC must develop and maintain halibut stocks to levels that will permit the optimum yield for the halibut fisheries. The IPHC meets this objective by including all sources of fishing mortality within the Total CEY and by establishing the commercial fixed gear catch limits only after subtracting halibut removals from other non-halibut commercial fisheries and non-commercial uses. Although most of the non-commercial uses of halibut have been relatively stable, growth in the guided sport fishery in recent years has resulted in this fishery harvesting a larger amount of halibut than it did in earlier years. Because the IPHC subtracts this increased non-commercial halibut fishery removal from the Total CEY, the amount of halibut available for the commercial halibut fishery decreased.

II. History of Management in the Guided Sport Halibut Fisheries

Until 2007, only regulations developed by the IPHC governed guided sport fisheries for halibut. The IPHC first adopted halibut sport fishing rules in 1973 to provide consistency and uniformity in halibut sport fishing regulations in all regulatory areas. At that time, the IPHC established that the sport fishing season for halibut would occur from March 1 through October 31. From 1984 through 1997, the IPHC required guided sport vessels to have IPHC licenses. Finally, the IPHC limited the number of halibut that charter vessel anglers could retain by imposing a daily bag limit. Since the initial limit of a three fish bag limit in 1973, the IPHC has adjusted the bag limit two times. The bag limit has varied between a limit of one, two, and three fish per angler per day. The bag limit under IPHC regulations for the 2011 guided sport fishery in Area 3A is two fish of any size per day unless more restrictive bag limits apply in Federal regulations. Currently, Federal regulations at 50 CFR 300.65 impose a more restrictive bag limit on the guided sport fishery of one halibut with a maximum length of 37 inches in Area 2C.

In 1997, the Council adopted separate guideline harvest levels (GHL) for Area 2C and Area 3A. Although the Council had a policy that guided sport halibut fisheries should not exceed the GHL, the Council did not recommend measures to constrain this fishery should it exceed the GHL. The proposed and final rules implementing the current GHLs were published in the **Federal Register** in 2002 and 2003 respectively (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003). These regulations are codified at 50 CFR 300.65.

The GHLs represent a pre-season specification of acceptable annual halibut harvests in the guided sport fisheries in Areas 2C and 3A. To accommodate some growth in the guided sport sector, while approximating historical levels, the Council recommended the GHLs based on 125 percent of the average 1995 through 1999 guided sport halibut harvest in each area. For Area 2C the maximum was set at 1,432,000 pounds (lbs), or 649.5 metric tons (mt) net weight, and in Area 3A the maximum GHL was set at 3,650,000 lbs (1,655.6 mt) net weight. The Council recommended a system of step-wise adjustments to accommodate decreases and subsequent increases in abundance. The Council recommended this system of GHL adjustments to provide a relatively predictable and stable harvest target for guided halibut sport sector notwithstanding a lack of measures to constrain the guided sport halibut fishery. A more detailed description of GHL management and the Council's rationale behind such management can be found in the proposed and final rules implementing that action (67 FR 3867, January 2, 2002; 68 FR 47256, August 8, 2003).

To ensure that the halibut stocks would continue to develop to a level that would permit optimum yield in the halibut fisheries, the IPHC and Council have recommended, and the Secretary of Commerce has adopted, a number of regulatory measures in Area 2C to limit guided sport halibut harvest to within the GHL. The primary regulatory measures included: (1) Effective in 2007 and 2008, maintaining a two-fish daily bag limit provided that at least one of the harvested halibut had a head-on length of no more than 32 inches (81.3 cm) (72 FR 30714, June 4, 2007); and (2) effective in 2009, a one-fish daily bag limit that superseded the June 4, 2007, two-fish with maximum size rule, a prohibition on harvest by the charter vessel guide and crew, and a line limit equal to the number of charter vessel anglers onboard, not to exceed six lines (74 FR 21194, May 6, 2009).

Members of the charter halibut sector challenged the May 6, 2009, final rule in the U.S. District Court for the District of Columbia (*Van Valin* v. *Locke, 671 F. Supp 2d 1 D.D.C 2009*). Plaintiffs argued that the rule violated the Halibut Act and the Administrative Procedure Act (APA). The court granted summary judgment in favor of the Secretary of Commerce and upheld the May 6, 2009, final rule. The one halibut per day bag limit for charter vessel anglers remains in effect for Area 2C.

In addition, as a response to concerns that that growth in the charter vessel sector was overcrowding productive halibut grounds, the Council recommended, and the Secretary of Commerce adopted, a limited access program to provide stability for the guided sport halibut fishery and decrease the need for regulatory adjustments affecting charter vessel anglers. NMFS published a final rule implementing the charter halibut limited access program on January 5, 2010 (75 FR 554). Under the program, NMFS initially issued permits to those businesses that historically and recently participated in the guided sport fishery.

The Area 2C guided sport harvest has exceeded its GHL every year since 2004 notwithstanding the foregoing management measures designed to control sport halibut harvest in this area. During 2004 through 2007, the GHL was 1,432,000 lbs (649.5 mt). During that time period, guided sport harvests were approximately 1,750,000 lbs (793.8 mt) in 2004, 1,952,000 lbs (885.4 mt) in 2005, 1,804,000 lbs (818.3 mt) in 2006, and 1,918,000 lbs (870.0 mt) in 2007. In 2008, the GHL was 931,000 lbs (422.3 mt) and guided sport harvests was approximately 1,999,000 lbs (906.7 mt). In 2009 the GHL was 788,000 lbs (357.4 mt) and the guided sport harvest was approximately 1,245,000 lbs (564.7 mt). In 2010, the GHL was 788,000 lbs (357.4 mt). The Alaska Department of Fish and Game (ADF&G) provided the IPHC with a preliminary estimate of the guided sport harvest in 2010 of 46,816 fish yielding 1,279,000 lbs (580.1 mt) (November 1, 2010, letter from ADF&G to the IPHC).

The Total CEY for 2011 is 5,390,000 lbs (2,445.0 mt) in Area 2C. The corresponding GHL is 788,000 lbs (357.4 mt) in Area 2C. Because NMFS imposed no additional charter restrictions in 2011, the IPHC believed that charter harvest was likely to exceed the GHL and result in total harvest exceeding the total CEY. As such, the IPHC recommended and the Secretary of State, with the concurrence of the Secretary of Commerce, accepted a daily bag limit for charter vessel anglers in Area 2C of one halibut with a maximum length of 37 inches (94.0 cm) per day (76 FR 14300, March 16, 2011). The IPHC recommended this additional management measure in the Area 2C charter fishery to limit guided sport halibut harvest to the GHL and achieve the IPHC's overall conservation objective for Area 2C.

III. Proposed Catch Sharing Plan (CSP) for Area 2C and Area 3A

In October 2008, the Council adopted a motion to recommend the CSP to the Secretary of Commerce. The motion is available at *http://alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HalibutCSPmotion1008.pdf.* The Council intended the CSP to be a comprehensive management program for the guided sport halibut fisheries in Area 2C and Area 3A. If approved, the proposed regulations would (1) establish sector allocations of a combined catch limit to the commercial and guided sport halibut fisheries in Area 2C and in Area 3A, (2) implement harvest restrictions (CSP restrictions) for charter vessel anglers in each area that would be intended to limit guided sport harvest to within the target harvest range around that sector's catch limit for that area, and (3) authorize transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest by charter vessel anglers in the guided sport halibut fishery. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to, or instead of, the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Because GAF would be a use of halibut IFQ, GAF harvested by charter vessel anglers would not be included in estimates of guided sport harvest under the CSP.

The CSP allocations would replace the GHL with a percentage allocation of the combined catch limit to the guided sport fishery. The combined catch limit would be determined by the IPHC each year prior to the fishing season. The CSP also would establish non-discretionary CSP restrictions for charter vessel anglers prior to the fishing season based on projected harvests and guided sport catch limits for that year. Under the GHL, restrictions for charter vessel anglers in Area 2C were implemented by separate NMFS rulemaking after the GHL was exceeded. The pre-season specification of the CSP restrictions is intended to limit guided sport harvest to the target before an overage occurs, as opposed to the retroactive GHL approach that implements corrective action after the overages have occurred.

The pre-season specification of CSP restrictions is consistent with the Council's objective to maintain the guided sport season length in effect in recent years (February 1 through December 31) with no inseason changes to harvest restrictions. The Council developed this objective based on public testimony from charter vessel operators indicating that inseason changes to harvest restrictions would be disruptive to guided sport operators and anglers. Many charter vessel anglers typically book fishing trips with operators well in advance of the trip date with an expectation that the harvest restrictions that are effective at the beginning of the fishing season will be in place throughout that season. Management changes to bag or size limits for charter vessel anglers within a fishing season may cause considerable inconvenience for guided sport anglers and operators if anglers decide to postpone or cancel their guided sport fishing trip due to the bag or size limit change. The potential for inseason management changes also could result in fewer anglers planning guided sport fishing trips in Alaska, which could have a significant adverse economic impact on charter vessel operators by reducing revenue.

The Council recommended, and NMFS agrees, that the annual CSP catch limits for the commercial and charter sectors and the CSP restrictions for charter vessel anglers should be determined and implemented by a predictable and standardized methodology as part of the IPHC's annual recommendations for halibut fishery conservation and management. This proposed rule would establish procedures for determining the sector catch limits and CSP restrictions for each area in order to provide a systematic method for limiting projected charter harvest to the target harvest range determined by the CSP. NMFS proposes that the annual CSP catch limits for the commercial and charter sectors and the CSP restrictions for charter vessel anglers be implemented as IPHC annual management measures. If the proposed CSP is approved, NMFS would include the CSP sector catch limits and CSP restrictions in the IPHC annual management measures published in the **Federal Register** each year, as specified by regulations at 50 CFR 300.62.

These annual management measures are effective until superseded by regulations, which typically result when the Secretary of State and the Secretary of Commerce accept the regulatory recommendations made by the IPHC at its next January annual meeting. In recent years, this schedule for implementing IPHC regulations has affected the February 1 season opening date for halibut sport fisheries in Alaska. The effective date of the annual management measures has typically been around March 1. Thus, the February 1 opening of the sport season was regulated by the previous year's annual management measures, which had not yet been superseded by the most recent IPHC-recommended regulations. This situation likely would continue under the CSP unless the IPHC recommends a change to the February 1 opening for the sport fishing season. However, implementation of the annual management measures in March likely does not impact the guided sport fishery because there has historically been little or no halibut harvest in this fishery in February.

Except for authorizing commercial halibut quota share (QS) holders to transfer IFQ as GAF to charter halibut permit holders, the Council did not intend for the CSP to change the management of the commercial longline

halibut fisheries in Area 2C and Area 3A. The directed commercial halibut fisheries in Area 2C and Area 3A are managed under the IFQ program pursuant to regulations at 50 CFR 679 subparts A through E. The proposed rule would amend these regulations to authorize transfers between IFQ and GAF and establish the requirements for using GAF.

IV. CSP Allocation Between the Commercial and Guided Sport Halibut Fisheries

A. Annual Combined Catch Limit

The CSP would (1) change the current process for specifying annual commercial catch limits for the commercial halibut fisheries in Area 2C and Area 3A, and (2) establish a process for specifying annual guided sport catch limits in Area 2C and Area 3A. The process for specifying annual guided sport catch limits under the CSP would replace the GHL for the guided sport fisheries in Area 2C and Area 3A. The IPHC currently specifies annual catch limits only for the directed commercial halibut fisheries, and Federal regulations determine the GHL for the guided sport halibut fisheries based on the Total CEY in Area 2C and Area 3A determined by the IPHC. Under the proposed CSP, the IPHC would specify an annual combined catch limit for Area 2C and for Area 3A at its annual meeting, which has typically taken place in January. Each area's annual combined catch limit in net pounds would be the total allowable halibut harvest for the directed commercial halibut fishery plus the total allowable halibut harvest for the guided sport halibut fishery under the CSP.

NMFS anticipates that the IPHC process for determining the annual combined catch limit would be similar to its current process for determining annual commercial catch limits. The IPHC would continue to estimate the exploitable biomass of halibut using a combination of harvest data from the commercial, sport, and subsistence fisheries, and information collected during scientific surveys and sampling of bycatch in other fisheries. The IPHC would calculate the Total CEY, or the target level for total removals (in net pounds) for that area in the coming year, by multiplying the target harvest rate by the estimate of exploitable biomass. With the exception of guided sport removals, the IPHC would subtract estimates of all non-commercial removals from the Total CEY. The remaining CEY, after the removals are subtracted, would be the combined commercial and guided sport fishery CEY and would provide the basis for the IPHC's determination of the annual combined catch limit for Areas 2C and 3A. The IPHC would continue to consider the combined commercial and guided sport fishery CEY, staff recommendations, harvest policy, and stakeholder input, when it specifies the Area 2C and Area 3A annual combined catch limits in net pounds. The IPHC process for determining annual combined catch limits under the proposed CSP is presented in Figure 5.

Figure 5. IPHC Process for Setting Annual Combined Catch Limits for Area 2C and Area 3A Under the Proposed CSP

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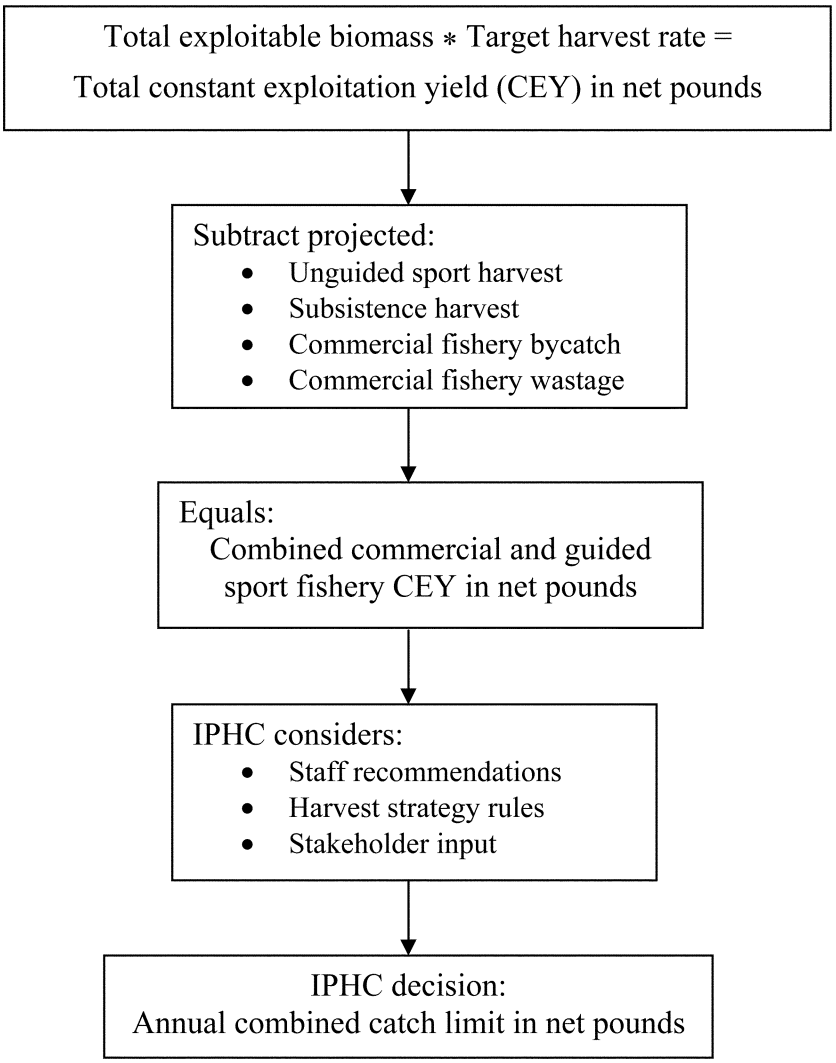

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Under the CSP, the IPHC would divide the annual combined catch limits into separate annual catch limits for the commercial and guided sport fisheries. The CSP allocates a fixed percentage of the annual combined catch limit to the guided sport and commercial fisheries. The fixed percentage allocation to each sector varies with halibut abundance. The IPHC would multiply the CSP allocation percentages for each area by the annual combined catch limit to calculate the commercial and guided sport catch limits in net pounds. At moderate to low levels of halibut abundance, the CSP could provide the guided sport sector with a smaller poundage catch limit than it would have received under the GHL program. Conversely, at higher levels of abundance, the CSP could provide the guided sport sector with a larger poundage catch limit than it would have received under the GHL program. The Council intended the CSP sector allocations to balance the needs of the guided sport and commercial sectors at all levels of halibut abundance.

Although the CSP allocation method is a significant change from the current allocation method under the GHL, NMFS believes that the allocation under the CSP provides a more equitable management response to changes in Total CEY. For example, the Area 2C GHL was 788,000 lbs in 2009. The Area 2C Total CEY declined by approximately 16 percent from 2009 to 2010, but this decline did not trigger a change in the GHL, which remained at 788,000 lbs in 2010. The burden of a lower exploitable biomass in Area 2C was borne entirely by the commercial sector in 2010. Conversely, when halibut exploitable biomass increases, the GHL does not allow the guided sport sector to fully benefit from this increase. For example, the Area 3A Total CEY increased by approximately 11 percent from 2006 to 2007, but this increase did not trigger a change in the GHL, which was at the maximum level of 3,650,000 lbs in 2006 and 2007.

The Council considered establishing fixed poundage allocations to the guided sport sector as implemented under the GHL program. However, the Council determined that use of a combined catch limit under the CSP would allow the IPHC to establish a clear allocation between the guided sport and commercial halibut sectors. Allocating each sector a percentage of the combined catch limit would be a simple calculation and would be transparent and comprehensible to each user group. This approach is equitable for halibut fishery management because both the commercial and guided sport sector allocations adjust directly with changes in halibut exploitable biomass. Thus, both the guided sport and commercial sectors would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

B. Annual Commercial Fishery and Guided Sport Fishery Catch Limits

The Council considered historical catch information when determining the recommended CSP allocation percentages for the commercial and guided sport sectors. The Council reviewed average guided sport harvest estimates for individual years and for different combinations of years ranging from 1999 through 2005. The Council recommended two sets of CSP allocation percentages for the commercial and guided sport sectors in Area 2C and in Area 3A. At catch limit levels of 5,000,000 lbs (2,267.9 mt) and less in Area 2C and 10,000,000 lbs (4,535.9 mt) and less in Area 3A, the CSP would allocate a higher percentage of the combined catch limit to the guided sport sector than it would receive under combined catch limits above these levels. The Council recommended, and NMFS proposes, higher guided sport allocation percentages at relatively low abundance levels of halibut to ameliorate the effects of replacing the GHL stair-step benchmark in pounds with a CSP allocation percentage that varies directly with the annual combined catch limit.

When the IPHC sets an annual combined catch limit of less than 5,000,000 lbs (2,267.9 mt) in Area 2C, the commercial fishery allocation would be 82.7 percent and the guided sport fishery allocation would be 17.3 percent of the annual combined catch limit. This proposed guided sport fishery allocation percentage was calculated as 125 percent of average guided sport harvest in Area 2C from 2001 through 2005 divided by combined guided sport and commercial halibut harvests from 2001 through 2005. The proposed allocation of 17.3 percent was the largest percentage allocation considered by the Council for Area 2C.

When the IPHC sets the annual combined catch limit at 5,000,000 lbs (2,267.9 mt) or more in Area 2C, the commercial fishery allocation would be 84.9 percent and the guided sport fishery allocation would be 15.1 percent of the Area 2C annual combined catch limit. This proposed guided sport CSP allocation percentage was calculated as the 2005 guided sport harvest estimates divided by the combined 2005 guided sport and commercial harvests in Area 2C. The Council considered smaller percentage allocations to the guided sport sector, including the current GHL formula, which is 125 percent of the average 1995 through 1999 guided sport harvest divided by the 1995 through 1999 combined guided sport and commercial harvests in Area 2C. However, because guided sport harvests in Area 2C have exceeded the GHL since it was implemented in 2004, the Council determined, and NMFS agrees, that 2005 guided sport harvest would be a more appropriate basis for determining the guided sport allocation percentages under the CSP. The guided sport harvest in 2005 was the second highest halibut harvest estimated since 1999. Table 1 presents the Area 2C commercial and guided sport fishery percentage allocations under the proposed CSP.

TABLE 1—AREA 2C CSP ALLOCATIONS TO THE COMMERCIAL AND GUIDED SPORT FISHERIES AS A PERCENTAGE OF THE ANNUAL COMBINED CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP allocation to the commercial fishery as a percentage of the annual combined catch limit is:	then the CSP allocation to the guided sport fishery as a percentage of the annual combined catch limit is:
between 0 lbs	4,999,999 lbs	82.7%	17.3%
5,000,000 lbs or greater		84.9%	15.1%

For Area 3A annual combined catch limits of less than 10,000,000 lbs (4,535.9 mt), the commercial fishery allocation would be 84.6 percent and the guided sport fishery allocation would be 15.4 percent of the Area 3A annual combined catch limit. The Council's recommended CSP guided sport percentage allocations for annual combined catch limits of less than 10,000,000 lbs (4,535.9 mt) in Area 3A is based on a calculation of 125 percent of the average guided sport harvest from 2001 through 2005, which is the same formula the Council recommended for the Area 2C percentage allocation at low abundance levels.

When the IPHC sets Area 3A annual combined catch limit at 10,000,000 lbs (4,535.9 mt) or more, the commercial fishery allocation would be 86 percent and the guided sport fishery allocation would be 14 percent of the Area 3A annual combined catch limit. The proposed guided sport CSP percentage allocation for Area 3A at annual combined catch limits of 10,000,000 lbs (4,535.9 mt) and greater was calculated using the GHL formula of 125 percent of the 1995 through 1999 average guided sport harvest estimates in Area 3A. The Council determined that the GHL formula was appropriate for the Area 3A CSP percentage allocation because the annual average guided sport harvest from 2004 through 2007 exceeded the GHL by less than three percent. NMFS agrees that the GHL formula likely continues to be an appropriate allocation target because the Area 3A guided sport fishery harvest did not exceed the GHL in 2008 and 2009. Table 2 presents the Area 3A commercial and guided sport fishery percentage allocations under the proposed CSP.

TABLE 2—AREA 3A CSP ALLOCATIONS TO THE COMMERCIAL AND GUIDED SPORT FISHERIES AS A PERCENTAGE OF THE ANNUAL COMBINED CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP allocation to the commercial fishery as a percentage of the annual combined catch limit is:	then the CSP allocation to the guided sport fishery as a percentage of the annual combined catch limit is:
between 0 lbs	9,999,999 lbs	84.6%	15.4%
10,000,000 lbs or greater		86.0%	14.0%

The CSP would apportion the annual combined catch limits for Area 2C and Area 3A between the commercial fishery and the guided sport fishery. For example, if the IPHC were to recommend an annual combined catch limit of 6,500,000 lbs (2,948.4 mt) for Area 2C, the annual commercial catch limit for Area 2C would be calculated by multiplying 6,500,000 lbs (2,948.4 mt) by 84.9 percent, which equals 5,518,000 lbs (2,502.9 mt). The guided sport catch limit for Area 2C would be calculated by multiplying 6,500,000 lbs (2,948.4 mt) by 15.1 percent, which equals 981,500 lbs (445.2 mt).

NMFS would publish the catch limits for the guided sport and commercial fisheries in the **Federal Register** as part of the IPHC annual management measures pursuant to 50 CFR 300.62.

C. Guided Sport Target Harvest Range

The Council recognized, and NMFS agrees, that managing guided sport harvest is imprecise and, therefore, guided sport harvest in Area 2C and 3A under the CSP can be expected to vary above and below the guided sport catch limit. To account for this imprecision, NMFS proposes that the CSP should restrict guided sport harvest to within a guided sport target harvest range corresponding with plus or minus 3.5 percentage points of the guided sport allocation percentage for that year. Tables 3 and 4 present the method for calculating the guided sport target harvest ranges for Area 2C and Area 3A under the proposed CSP.

TABLE 3—GUIDED SPORT TARGET HARVEST RANGE FOR AREA 2C

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP percentage allocation to the guided sport fishery is:	and the lowest value of the target harvest range is calculated by multiplying the annual combined catch limit by	and the highest value of the target harvest range is calculated by multiplying the annual combined catch limit by
between 0 lbs	4,999,999 lbs	17.3%	13.8%	20.8%
5,000,000 lbs or greater		15.1%	11.6%	18.6%

TABLE 4—GUIDED SPORT TARGET HARVEST RANGE FOR AREA 3A

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the CSP percentage allocation to the guided sport fishery is:	and the lowest value of the target harvest range is calculated by multiplying the annual combined catch limit by	and the highest value of the target harvest range is calculated by multiplying the annual combined catch limit by
between 0 lbs	9,999,999 lbs	15.4%	11.9%	18.9%
10,000,000 lbs or greater		14.0%	10.5%	17.5%

Using the previous example of an annual combined catch limit of 6,500,000 lbs (2,948.4 mt) for Area 2C, the guided sport allocation of 15.1 percent, and the guided sport catch limit of 981,500 lbs (445.2 mt), NMFS intends the proposed CSP restrictions to limit guided sport harvest to between 15.1 percent minus 3.5 percentage points, or 11.6 percent, and 15.1 percent plus 3.5 percentage points, or 18.6 percent, of the annual combined catch limit. Thus, the CSP restrictions for Area 2C under this example would be intended to limit guided sport fishery harvest to between 754,000 lbs (342.0 mt) and 1,209,000 lbs (548.4 mt). The lowest value of the target harvest range would be calculated by multiplying the annual combined catch limit by 11.6 percent (6,500,000 lbs (2,948.4 mt) × 11.6 percent = 754,000 lbs (342.0 mt)). The highest value of the target harvest range would be calculated by multiplying the annual combined catch limit by 18.6 percent (6,500,000 lbs (2,948.4 mt) × 18.6 percent = 1,209,000 lbs (548.4 mt)). The annual guided sport catch limit, 981,500 lbs (445.2 mt) in this example, is the midpoint of the guided sport target harvest range specified by the CSP. The CSP restriction applied each year could vary, based on the annual combined catch limit as established by the IPHC and projected guided sport harvest estimates.

NMFS recognizes that guided sport halibut removals may exceed the guided sport catch limit in some years, and removals may be under the catch limit in other years, similar to variations in

guided sport harvest under the GHL program. However, the Council anticipated, and NMFS agrees, that over time, halibut harvests in the guided sport sector under the CSP would balance out around the guided sport catch limits to ensure that conservation and management objectives are achieved. Conservation of the halibut resource would be ensured because the IPHC would continue to account for all removals when determining the annual combined catch limit under the CSP. IPHC stock assessments would continue to account for guided sport harvests that exceed the sector's catch limit. Operationally, overages would result in a corresponding decrease in the combined guided sport and commercial catch limit in the following year. Underages would accrue to the benefit of the halibut biomass and all user groups and could result in a corresponding increase in the combined catch limit in the following year. The Council determined, and NMFS agrees, that halibut fishery management under the CSP would more likely limit the guided sport halibut fishery to its catch limit over time than the GHL program because the annual, non-discretionary CSP restrictions on guided sport harvest would restrict projected harvest at varying levels of annual combined catch limits. This annual implementation of the CSP also would be more timely and responsive to changes in halibut abundance because the restrictions on guided sport harvest are determined prior to the season. The GHL program relies on the implementation of harvest restrictions after a GHL overage takes place. Additionally, the Council, IPHC, and NMFS would continue to assess effectiveness of the CSP in halibut fisheries management. The Council and NMFS anticipate that as the CSP is implemented over time, the Council and its SSC would review the CSP. The SSC is the Council's primary scientific advisory body. As such, it provides the Council, NMFS, and the public with scientific and technical reviews of regulatory amendment analyses, stock assessments, and research and data needs for fisheries management in Alaska.

V. CSP Restrictions

Under the CSP, the annual combined catch limit and projected guided sport harvest for Area 2C and Area 3A would trigger the CSP restrictions, or the harvest limit regulations governing anglers in the guided sport fishery in each area. The CSP restrictions are designed to limit guided sport fishery harvests in Area 2C and Area 3A within the guided sport target harvest range. The CSP restrictions for charter vessel anglers are daily bag limits of one or two halibut, which may be implemented with or without restrictions on the maximum size of halibut retained under the daily bag limit. The CSP would require default CSP restrictions when the guided sport sector is projected to harvest within its allocated range, more stringent restrictions when the guided sport sector is projected to exceed its target harvest range, and in some circumstances, less stringent restrictions when the guided sport sector is projected to be below its target harvest range.

At its annual meeting in January, the IPHC would specify the Area 2C and Area 3A annual combined catch limits and divide the combined catch limits into separate annual commercial and guided sport catch limits. The IPHC would use guided sport harvest projections and the appropriate CSP management tier to determine the CSP restrictions that would be in place for the guided sport fishery in Area 2C and Area 3A for the upcoming year. If the Secretary of State and the Secretary of Commerce accept the IPHC recommendations, NMFS will publish the Area 2C and Area 3A annual commercial and guided sport catch limits and the CSP restrictions in the **Federal Register** as annual management measures pursuant to 50 CFR 300.62.

A. Default CSP Restrictions

The Council recommended, and NMFS agrees, that CSP restrictions for each area be based on an area's annual combined catch limit for that year. CSP restrictions contain four levels, or tiers, based on annual combined catch limits for each Area 2C and Area 3A. Each tier contains associated CSP restrictions. For Area 2C, the tiers of annual combined catch limits are: (1) Between 0 lbs (0 mt) and 4,999,999 lbs (2,267.9 mt); (2) between 5,000,000 lbs (2,267.9 mt) and 8,999,999 lbs (4,082.3 mt); (3) between 9,000,000 lbs (4,082.3 mt) and 13,999,999 lbs (6,350.3 mt); and (4) 14,000,000 lbs (6,350.3 mt) and greater. For Area 3A, the tiers of annual combined catch limits are: (1) between 0 lbs (0 mt) and 9,999,999 lbs (4,535.9 mt); (2) between 10,000,000 lbs (4,535.9 mt) and 19,999,999 lbs (4,535.9 mt); (3) between 20,000,000 lbs (4,535.9 mt) and 26,999,999 lbs (12,246.9 mt); and (4) 27,000,000 lbs (12,246.9 mt) and greater. Following the IPHC's specification of the annual combined catch limit for each area, NMFS would implement the default CSP restrictions for charter vessel anglers in Area 2C and Area 3A unless the projected guided sport harvest was estimated to be outside of the guided sport target harvest range.

The Council recommended, and NMFS agrees, that daily bag limits alone, or in combination with a maximum size limit, are appropriate CSP restrictions to limit guided sport harvest. The Council recommended a default CSP restriction limiting charter vessel anglers to two fish of any size each day at relatively high levels of halibut abundance, which the Council specified as 14,000,000 lbs (6,350.3 mt) or greater in Area 2C, and 27,000,000 lbs (12,246.9 mt) or greater in Area 3A (tier 4). At these levels of abundance, annual combined catch limits would be relatively higher and guided sport anglers would not require more stringent CSP restrictions to maintain harvest within the guided sport target harvest range. As halibut abundance levels and annual combined catch limits decrease, CSP restrictions would be more stringent, further limiting guided sport harvest at those lower tiers. The Council recommended that at the next lower tier, tier 3, the default CSP restriction should be a daily limit of two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If, however, a charter vessel angler retains only one halibut in a calendar day, that halibut could be of any length. The Council recommended the most restrictive default CSP restriction, a daily limit of one halibut, apply to tiers 1 and 2 for each area. The Council determined, and NMFS agrees, that this conservative default CSP restriction should be in place at the relatively low levels of abundance reflected in tiers 1 and 2 to promote the development of halibut stocks levels supporting optimum yield. Table 5 presents the default CSP restrictions for Area 2C tiers and Table 6 presents the default CSP restrictions for Area 3A tiers.

TABLE 5—DEFAULT CSP RESTRICTIONS FOR AREA 2C

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	one halibut of any size.
Tier 2	between 5,000,000 lbs	8,999,999 lbs	one halibut of any size.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
Tier 4	14,000,000 lbs and greater		two halibut of any size.

TABLE 6—DEFAULT CSP RESTRICTIONS FOR AREA 3A

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	9,999,999 lbs	one halibut of any size.
Tier 2	between 10,000,000 lbs	19,999,999 lbs	one halibut of any size.
Tier 3	between 20,000,000 lbs	26,999,999 lbs	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
Tier 4	27,000,000 lbs and greater		two halibut of any size.

NMFS provides the following example to illustrate the CSP tiered system of harvest restrictions. An IPHC annual combined catch limit of 6,500,000 lbs (2,948.4 mt) in Area 2C would correspond with tier 2. The tier 2 default CSP restriction would limit each charter vessel angler to retaining no more than one halibut of any size per calendar day. An IPHC annual combined catch limit of 25,000,000 lbs (11,339.8 mt) in Area 3A would correspond with tier 3. The tier 3 default CSP restriction would limit each charter vessel angler to retaining no more than two halibut per calendar day, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). Note that although the default CSP restrictions are the same for Area 2C and Area 3A tiers, the IPHC annual combined catch limits may differ between Area 2C and Area 3A. Therefore, it is possible that charter vessel anglers in Area 2C would be subject to a different CSP restriction than charter vessel anglers in Area 3A in any particular year.

B. Projections of Guided Sport Harvest

Projections of guided sport harvest in Area 2C and Area 3A are an integral component of the CSP. Each year, the IPHC would use annual projections of total guided sport halibut harvest in net pounds for Area 2C and Area 3A for the upcoming year to determine whether anglers in the guided sport fishery are likely to harvest an amount of halibut outside of the management tier default target harvest range.

In January 2009, ADF&G staff prepared an analysis to assess the feasibility of projecting guided sport halibut harvest under the CSP. The Council's SSC reviewed the reports and provided its recommendations to the Council in February 2009. The ADF&G analysis can be found at: *http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HarvestProjectionsDisc709.pdf.* As detailed in that analysis, at least one, and possibly two, projections of guided sport halibut harvest for the upcoming year would be required for the CSP for both Area 2C and Area 3A.

Each year, the IPHC would specify the annual combined catch limit and, based on ADF&G harvest estimates, project guided sport harvest in net pounds for the upcoming year. The harvest projection would assume that charter vessel anglers would be subject to the default CSP restriction for the appropriate management tier. For example, to determine the total guided sport halibut harvest projection in net pounds under the management tier default CSP restriction, the IPHC would forecast the number of fish that would be harvested by charter vessel anglers and an average net weight of halibut harvested by charter vessel anglers. The product of the number of fish and the average net weight is the projection of guided sport halibut harvest in net pounds. If the projection under the default CSP restriction is below the guided sport target harvest range, the IPHC would prepare a second projection assuming a less stringent CSP restriction. If the projection under the default CSP restriction is above the guided sport target harvest range, the IPHC would implement a more stringent CSP restriction.

The IPHC will base its projections in large part on ADF&G analyses of guided sport harvest. ADF&G has used a variety of methods to project guided sport harvest in the past. For the CSP projections of guided sport halibut harvest, the IPHC will build on ADF&G's previous experience estimating guided sport halibut harvest prior to and under the CSP. The IPHC will use the best information available to develop harvest projections, including data from the ADF&G statewide harvest survey of sport anglers, ADF&G statewide saltwater charter logbooks, ADF&G dockside surveys, IPHC longline survey data, and any other information that improves the

accuracy of the projections. The IPHC will develop the projections to account for year-to-year changes to the CSP restrictions in effect for charter vessel anglers as well as normal year-to-year variability in harvest due to changes in fishing effort or catchability of halibut.

C. Determination of Annual CSP Restrictions

The annual CSP restrictions in effect in each area will be determined by using (1) the appropriate management tier associated with the IPHC's recommended annual combined catch limit, and (2) the projected guided sport harvest of halibut for each area under the default CSP restriction, expressed as a percentage of the annual combined catch limit for each area. The Council and NMFS anticipate that the default CSP restrictions would limit projected guided sport harvest to within the guided sport target harvest range for each area. However, in the event that projected guided sport harvest is above the management tier target harvest range, the CSP triggers more stringent CSP restrictions. In the event that the projected guided sport harvest is below the management tier target harvest range, the CSP may trigger relaxed CSP restrictions. Thus, there are up to three possible CSP restrictions for each tier, depending on whether projected guided sport harvest under the default CSP restriction is less than, within, or above the guided sport target harvest range.

Determination of Annual CSP Restrictions if Projected Guided Sport Harvest Is Within the Target Harvest Range

If the projected guided sport fishery harvest under the default CSP restriction is within the guided sport target harvest range, charter vessel anglers would be subject to the default CSP restriction for the year. For example, if the IPHC recommended an Area 2C annual combined catch limit of 9,500,000 lbs (4,309.1 mt), the IPHC would implement the default CSP restriction, which limits charter vessel anglers to retaining two halibut per day and one halibut must be less than 32 inches (81.3 cm). The target range around the 15.1 percent guided sport allocation would have a low value of 11.6 percent and a high value of 18.6 percent (see Table 3). This allocation range would correspond to a target harvest range from 1,102,000 lbs (499.9 mt) to 1,767,000 lbs (801.5 mt). If projected guided sport harvest under the default CSP restriction were greater than or equal to 1,102,000 lbs (499.9 mt) and less than or equal to 1,767,000 lbs (801.5 mt), the CSP would limit charter vessel anglers to the default CSP restriction, which is retaining no more than two halibut per day and one halibut must be less than 32 inches (81.3 cm). Table 7 provides NMFS' proposed process for determining Area 2C annual CSP restrictions if projected guided sport harvest under the default CSP restriction is within the guided sport target harvest range.

TABLE 7—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST IS WITHIN THE TARGET HARVEST RANGE UNDER THE DEFAULT CSP RESTRICTION

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	greater than or equal to 13.8% and less than or equal to 20.8% of the annual combined catch limit.	one halibut of any size.
Tier 2	between 5,000,000 lbs	8,999,999 lbs	greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	one halibut of any size.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
Tier 4	14,000,000 lbs and greater		greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	two halibut of any size.

If the IPHC recommended an Area 3A annual combined catch limit of 28,000,000 lbs (12,700.6 mt), the default CSP restriction would be a daily limit of two halibut of any size. The target range around the 14.0 percent guided sport allocation would have a low value of 10.5 percent and a high value of 17.5 percent (see Table 4). If projected guided sport harvest in Area 3A under the default CSP restriction represented an allocation greater than or equal to 10.5 percent and less than or equal to 17.5 percent, the CSP would limit charter vessel anglers to the default CSP restriction, which is retaining two halibut of any size per day.

Table 8 provides NMFS' proposed process for determining Area 3A annual CSP restrictions if projected guided sport harvest under the default CSP restriction is within the guided sport target harvest range.

TABLE 8.—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST IS WITHIN THE TARGET HARVEST RANGE UNDER THE DEFAULT CSP RESTRICTION

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	9,999,999 lbs	greater than or equal to 11.9% and less than or equal to 18.9% of the annual combined catch limit.	one halibut of any size.
Tier 2	between 10,000,000 lbs	19,999,999 lbs	greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	one halibut of any size.
Tier 3	between 20,000,000 lbs	26,999,999 lbs	greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
Tier 4	27,000,000 lbs and greater		greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	two halibut of any size.

Determination of Annual CSP Restrictions if Projected Guided Sport Harvest is Below the Target Harvest Range

If the projected guided sport fishery harvest under the default CSP restriction is less than the lowest value of the target harvest range, the CSP specifies that charter vessel anglers could be subject to the next less stringent CSP restriction, that is, the default CSP restriction under the next higher management tier. For example, if the annual combined catch limit is 26,000,000 lbs for Area 3A, tier 3 is the effective tier (see Table 6) and the default CSP restriction would limit charter vessel anglers to retaining two halibut per day, and one halibut must be 32 inches (81.3 cm) or less. If projected guided sport harvest under this default CSP restriction as a percentage of the annual combined catch limit was less than 10.5 percent (see Table 4), then the IPHC would complete a second projection using the default CSP for tier 4, which limits charter vessel anglers to retaining two halibut per day of any size.

If projected guided sport harvest under the tier 4 projection is less than 17.5 percent of the annual combined catch limit for Area 3A, which is the highest value of the guided sport target harvest range for annual combined catch limits of 10,000,000 lbs (4,535.9 mt) and greater (see Table 4), then the tier 4 default CSP restriction would apply, limiting charter vessel anglers in Area 3A to retaining two halibut per day of any size. If, however, projected harvest under the tier 4 default CSP restriction was greater than 17.5 percent (see Table 4), the tier 3 default CSP restriction would apply, limiting charter vessel anglers in Area 3A to retaining two halibut per day, one of which must be 32 inches (81.3 cm) or less.

Table 9 describes NMFS' proposed process for determining Area 2C annual CSP restrictions if projected guided sport harvest under the default CSP restriction is below the guided sport target harvest range under each tier.

TABLE 9—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest vessel using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	less than 13.8% of the annual combined catch limit.	one halibut of any size..	N/A	one halibut of any size.

TABLE 9—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE—Continued

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest vessel using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 2	between 5,000,000 lbs	8,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	less than or equal to 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
					greater than or equal to 18.6% of the annual combined catch limit.	one halibut of any size.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut of any size..	less than or equal to 18.6% of the annual combined catch limit.	two halibut of any size.
					greater than or equal to 18.6% of the annual combined catch limit..	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
Tier 4	14,000,000 lbs and greater		less than 11.6% of the annual combined catch limit.	N/A	N/A	two halibut of any size.

N/A = not applicable.

Table 10 describes NMFS' proposed process for determining the Area 3A annual CSP restrictions if projected guided sport harvest under the default CSP restriction is below the guided sport target harvest range under each tier.

TABLE 10—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS BELOW THE TARGET HARVEST RANGE

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	and the projected guided sport harvest using the default CSP restriction is:	then the next higher tier default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	If projected guided sport harvest using the next higher tier default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	9,999,999 lbs	less than 11.9% of the annual combined catch limit.	one halibut of any size.	N/A	one halibut of any size
Tier 2	between 10,000,000 lbs	19,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length
					greater than or equal to 17.5% of the annual combined catch limit.	one halibut of any size
Tier 3	between 20,000,000 lbs	26,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut of any size.	less than or equal to 17.5% of the annual combined catch limit.	two halibut of any size.
					greater than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length
Tier 4	27,000,000 lbs and greater		less than 10.5% of the annual combined catch limit.	N/A	N/A	two halibut of any size.

N/A = not applicable.

Exceptions to the method for determining the CSP restrictions exist for tiers 1 and 4. Where the projected guided sport harvest is less than the lowest value of the target harvest range in tier 1, a second projection would be unnecessary because the default CSP of the next higher tier, tier 2, is also one halibut of any size per day. Because the least restrictive CSP restriction under tier 1 is one halibut of any size per day, this CSP restriction would apply if projected guided sport harvest is less than or equal to the highest value of the target harvest range under the default CSP tier.

Where the projected guided sport harvest under tier 4 is less than the lowest value of the target harvest range, a second projection would be unnecessary because tier 4 is the highest tier and the default CSP restriction of two fish of any size per day is the least restrictive CSP restriction authorized under the CSP. Thus, the tier 4 CSP restriction of two fish of any size per day would apply if projected guided sport harvest is less than the highest value of the target harvest range under the default CSP tier. If projected guided sport harvest is greater than the highest value of the target harvest range under the default CSP tier, the CSP restriction

would be determined as discussed in the next section.

Determination of Annual CSP Restrictions if Projected Guided Sport Harvest Is Above the Target Harvest Range

If the projected guided sport fishery harvest under the default CSP restriction is greater than the highest value of the target harvest range, the CSP specifies that charter vessel anglers would be subject to the next more stringent CSP restriction, that is, the default CSP restriction under the next lower management tier. For example, in tier 4, the default CSP restriction limits charter vessel anglers to two fish of any size per day. If projected guided sport harvest under the tier 4 default CSP restriction is greater than the largest value of the target harvest range, then the tier 3 default CSP restriction would apply. In both Area 2C and Area 3A, the tier 3 default CSP restriction limits charter vessel anglers to retaining two halibut per day, one of which must be 32 inches (81.3 cm) or less. Similarly, in tier 3, if projected guided sport harvest under the tier 3 default CSP restriction is greater than the largest value of the target harvest range, then the tier 2 default CSP restriction would apply.

In both Area 2C and Area 3A, the tier 2 default CSP restriction limits charter vessel anglers to retaining one halibut of any size per day. However, the tier 1 and 2 default CSP restriction is the most restrictive guided sport harvest restriction under the CSP. If the projected guided sport harvest under the default CSP restriction is greater than the largest value of the target harvest range in tier 1 or tier 2, the Council specified that a maximum length limit would be placed on the one halibut that could be retained per day by charter vessel anglers in that area. The addition of the length limit to the one halibut daily bag limit is intended to further restrict guided sport harvest to be equal to or below the annual guided sport catch limit for the appropriate management tier.

Tables 11 and 12 describe NMFS' proposed process for determining Area 2C and Area 3A annual CSP restrictions if projected guided sport harvest under the default CSP restriction is above the target harvest range under each tier.

TABLE 11—DETERMINATION OF AREA 2C ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE

Tier	If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport harvest using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	4,999,999 lbs	greater than 20.8% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 17.3% of the annual combined catch limit.
Tier 2	between 5,000,000 lbs	8,999,999 lbs	greater than 18.6% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 15.1% of the annual combined catch limit.
Tier 3	between 9,000,000 lbs	13,999,999 lbs	greater than 18.6% of the annual combined catch limit.	one halibut of any size.
Tier 4	14,000,000 lbs and greater		greater than 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

TABLE 12—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 1	between 0 lbs	10,999,999 lbs	greater than 18.9% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 15.4% of the annual combined catch limit
Tier 2	between 10,000,000 lbs	19,999,999 lbs	greater than 17.5% of the annual combined catch limit.	one halibut of a maximum length to restrict guided sport harvest to be equal to or below 14.0% of the annual combined catch limit
Tier 3	between 20,000,000 lbs	26,999,999 lbs	greater than 17.5% of the annual combined catch limit.	one halibut of any size.

TABLE 12—DETERMINATION OF AREA 3A ANNUAL CSP RESTRICTIONS IF PROJECTED GUIDED SPORT HARVEST UNDER THE DEFAULT CSP RESTRICTION IS ABOVE THE TARGET HARVEST RANGE—Continued

Tier	If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	If the projected guided sport using the default CSP restriction is:	then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:
Tier 4	27,000,000 lbs and greater		greater than 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length

For example, if the Area 2C annual combined catch limit is 4,500,000 lbs (2,041.2 mt) and projected guided sport harvest as a percentage of the annual combined catch limit exceeds 20.8 percent, which is the greatest value of the guided sport target harvest range (see Table 3), then charter vessel anglers would be limited to retaining one halibut of a maximum length per day to limit guided sport harvest equal to or below 17.3 percent of the annual combined catch limit. This would keep the annual guided sport harvest within its allocation in Area 2C (see Table 1).

If the Area 3A annual combined catch limit is 14,000,000 lbs (6,350.3 mt) and projected guided sport harvest as a percentage of the annual combined catch limit exceeds 17.5 percent, which is the greatest value of the guided sport target harvest range (see Table 4), the CSP would limit charter vessel anglers to retaining one halibut of a maximum length per day to limit projected guided sport harvest equal to or below 14.0 percent of the annual combined catch limit. This would keep the annual guided sport harvest within its allocation in Area 3A (see Table 4).

The Council did not specify what the maximum length limit would be under tier 1 or tier 2 in its motion recommending the CSP. The Council contracted an analyst to prepare a supplemental analysis on the process for selecting a maximum length limit to manage guided sport halibut harvest in times of low abundance. In January 2009, the analyst presented a paper to the Council's SSC outlining two methods for projecting the average net weight of all halibut harvested by charter vessel anglers. The analyst's paper can be found at: *http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/HalibutCSPdisc709.pdf.* The Council's SSC reviewed the paper and provided its recommendations to the analyst in February 2009.

The annual guided sport catch limit (C) is the product of the guided sport sector allocation percentage specified in the CSP and the annual combined catch limit in pounds net weight established by the IPHC and expressed as equation 1:

$$C = CCL \cdot P_{\max} \qquad \text{(equation 1)}$$

where:

CCL = Annual combined catch limit in pounds net weight established by the IPHC for Area 2C and Area 3A, and

$P_{\max}$ = Maximum percentage of the annual guided sport catch limit that is allocated to the guided sport sector, expressed as a proportion.

For example, for an annual combined catch limit of 6,000,000 lbs (2,721.6 mt) in Area 2C, the guided sport sector allocation is 15.1 percent. The catch limit for the guided sport sector would therefore be calculated as 6,000,000 lbs (2,721.6 mt) × 0.151 = 906,000 lbs (410.9 mt).

For purposes of harvest estimation, ADF&G currently breaks each IPHC area into several subareas. ADF&G produces estimates of the number of fish harvested for each subarea, and then combines these estimates with size data from ADF&G creel surveys conducted at sites within the subareas. During creel surveys, ADF&G measures the length of harvested halibut and calculates a predicted weight for each fish in the sample using the IPHC length-weight relationship equation. ADF&G calculates average weight as the average of the predicted weights for each individual fish. The numbers of halibut of various sizes (size distribution) harvested by charter anglers vary by subarea. Because the magnitude of harvest also varies by area, ADF&G cannot simply combine creel survey data on the size of harvested halibut from all subareas to estimate total removals. Instead, ADF&G calculates guided sport halibut removals (R_p) by subarea and sums them to obtain total removals as expressed in equation 2:

$$R_p = \sum_S H_{Sp} w_{Sp} \qquad \text{(equation 2)}$$

where:

H_{Sp} = The estimated or projected number of halibut harvested by charter vessel anglers in each subarea S, and

W_{Sp} = The estimated or projected average net weight in pounds of halibut harvested by charter vessel anglers in each subarea S.

This is the general form of the equation currently used for estimating guided sport removals. Variants of this general equation could be used to estimate the maximum length limit under the CSP, depending on the method selected to calculate the maximum length limit.

The supplemental analysis prepared for the Council's SSC in January 2009 noted that there are a number of methods that could be used to calculate a maximum length limit to restrict the

total pounds of halibut harvested in the guided sport sector equal to or below the guided sport catch limit. The analyst assumed, and NMFS concurs, that the maximum length limit would be calculated as the length limit that would allow anglers to retain the largest halibut possible while limiting total guided sport harvest to a level equal to or below the annual guided sport catch limit.

The IPHC would base its maximum length limit calculation in large part on ADF&G analyses and projections of guided sport harvest. The IPHC would use a projection of H_{Sp}, the number of halibut that will be harvested by charter vessel anglers in each subarea and an annual projection of total guided sport halibut harvest for Area 2C and Area 3A. The CSP would use the projection of guided sport harvest in net pounds for the upcoming year, assuming that charter vessel anglers would be subject to the default CSP restriction for the appropriate management tier. The CSP would specify the method for calculating the greatest maximum length limit in whole inches (L_{in}) that produces a projection of guided sport removals (R_p) that does not exceed the annual guided sport catch limit (C).

The analyst developed two methods for calculating the length limit L_{in} for presentation to the Council's SSC in January 2009. The methods differ in their assumptions about how the size distribution of harvested halibut might change upon imposition of a maximum length limit.

Method A assumes that upon imposition of a maximum length limit the average weight of halibut harvested by charter anglers will equal the average weight of those fish that were equal to or less than the maximum length limit in a recent year in which anglers were allowed to harvest fish of at least that length. Use of size data from a recent year assumes that the size distribution of charter harvest from the recent year's sample is the best available data to describe the size distribution in the coming year in the absence of a size limit.

To project harvest using Method A, the IPHC would use ADF&G's calculation of the projected average weight (w_{Sp}) for each subarea using length data from only those halibut sampled in the recent year that were equal to or less than the prospective maximum length limit. Using equation 2, these projections of average weight would then be combined with harvest estimates for each subarea (H_{Sp}) to obtain a projected guided sport removal under each prospective length limit. For example, to evaluate guided sport removals resulting from a size limit of 40 inches (101.6 cm), the average weight of only those harvested halibut that were equal to or less than 40 inches (101.6 cm) in length in the sample from the most recent year would be calculated. After repeating the calculations for a range of maximum length limits, the IPHC would adopt the largest size limit L_{in} in whole inches that results in a projected guided sport removal (R_p) that is less than or equal to the annual guided sport catch limit (C).

Method B assumes that every halibut harvested and retained by charter vessel anglers would be precisely equal in length to the maximum length limit. Because all fish are assumed to be the same length, there would be no differences in the projected size distributions between subareas of each regulatory area. The IPHC would use the average weight that, when multiplied by the projected number of fish harvested in the entire IPHC regulatory area, would result in the annual guided sport catch limit (C) for that area as expressed in equation 3:

$$C = H_p w_p \qquad \text{(equation 3)}$$

where:

H_p = The estimated or projected number of halibut harvested in Area 2C or Area 3A, and

w_p = The average net weight in pounds of all halibut harvested by charter vessel anglers in Area 2C or Area 3A.

The CSP would then use the IPHC length-weight relationship equation to solve for the maximum length limit L_{in} corresponding with the average weight w_p. The current IPHC length-weight equation relates net weight in pounds (W) to length in centimeters (L_{cm}) and expressed in equation 4:

$$W = 6.921(10^{-6})Lcm^{3.24} \qquad \text{(equation 4)}$$

To obtain the maximum length limit under Method B, the CSP would substitute equation 4 for w_p in equation 3, solve for L_{cm}, then convert and round down to the nearest whole inch, which would be the maximum length limit in effect (L_{in}). If the IPHC were to modify this length-weight relationship equation or its parameters, the CSP would use the revised equation recommended by the IPHC.

For example, if the annual combined catch limit (CCL) was set by the IPHC for Area 2C at 6,000,000 lbs (2,721.6 mt), the guided sport allocation would be 15.1 percent, and the guided sport catch limit would be 906,000 lbs (410.9 mt) (equation 1). If projected guided sport harvest for the coming year (H_p) was 50,000 halibut, then the average net weight (w_p) could not exceed 18.1 lbs, or 8.2 kilograms (kg) (equation 3). The length that results in a predicted average net weight of 18.1 lbs (8.2 kg) is 95.7 cm, or 37.7 inches (equation 4). The maximum length limit would therefore be rounded down to the nearest whole inch and set at 37 inches (95.7 cm).

In January 2011, the IPHC used Method B when it recommended a maximum length limit for the 2011 fishery for charter vessel anglers harvesting halibut in Area 2C. The Secretary of State and the Secretary of Commerce approved the IPHC's recommendation (76 FR 14300, March 16, 2011) and charter vessel anglers in Area 2C are limited to catching and retaining one halibut per calendar day that is no longer than 37 inches. Following the IPHC's recommendation, guided sport sector stakeholders commented to NMFS that the IPHC's use of Method B was too conservative because it assumes that all charter vessel anglers would be able to harvest precisely a halibut of the maximum size limit. This likely would not occur and some anglers will harvest halibut smaller than the maximum size limit. The guided sport sector stakeholders suggested that it might be possible to use a less conservative methodology than Method B that would result in a relatively larger maximum length limit while limiting guided sport harvest to target levels.

In response to requests from guided sport sector stakeholders, ADF&G used an alternative method to calculate the maximum size limit. This additional method, referred to as Method C in this proposed rule, combines the assumptions used in Methods A and B to produce an intermediate result. Like Method A, Method C would be used to calculate a maximum length limit using data from a previous year in which the guided sport fishery was not constrained by a length limit, or a year in which a less constraining (higher) maximum length limit was in place to manage the guided sport fishery under its allocation.

Method C assumes that under a size limit in the coming year, (a) the proportion of the harvested halibut that will be smaller than the prospective maximum length limit will equal the proportion that were under that length in the previous year, (b) the average weight of fish smaller than the prospective maximum length limit will remain unchanged from the previous year, and (c) the portion of the previous year's harvest that was larger than the prospective maximum length limit will be exactly equal to the length limit in the coming year.

The Method C calculations would proceed as follows. For each prospective maximum length limit L_{in}, the CSP would use the proportion of the halibut in the previous year harvest sample that were less than or equal to the size limit, and the average weight of those fish. The average weight of the remaining portion of the harvest would be assumed to be equal to the average weight of halibut of length L_{in}, predicted from the IPHC length-weight relationship (equation 4). Guided sport removals would be calculated for prospective length limits using equation 2, with the average weight for each subarea w_{Sp} calculated as follows:

$$w_{Sp} = (p_{UL} w_{UL}) + (p_{OL} w_{OL}) \quad \text{(equation 5)}$$

where:

p_{UL} = the proportion of halibut in the previous year's creel survey sample from subarea S that were less than or equal in length to the prospective length limit L_{in},

w_{UL} = the average weight of halibut in the previous year's creel survey sample from subarea S that were less than or equal in length to the prospective length limit L_{in},

p_{OL} = the proportion of halibut in the previous year's creel survey sample from subarea S that were greater in length than the prospective length limit L_{in},

w_{OL} = the average weight of halibut of prospective length limit L_{in}, predicted from the IPHC length-weight relationship equation (equation 4), and

$p_{UL} + p_{OL} = 1$.

The IPHC would then select the largest size limit L_{in} in whole inches that results in a projected charter removal (R_p) that is less than or equal to the annual guided sport catch limit (C).

For example, if calculating the average weight corresponding with a 40 inch (101.6 cm) maximum length limit, the CSP would use, for each subarea, the proportion of fish in the previous year's sample that were less than or equal to 40 inches (101.6 cm) in length, and the average weight of only those fish. Suppose that 70 percent of the fish in a subarea were less than or equal to 40 inches (101.6 cm) in length and those halibut had an average net weight of 13.0 lbs (5.9 kg). The remaining 30 percent of the harvested fish would be assumed to have an average net weight of 22.0 lbs (10 kg) (from equation 4). In this example, the average weight for this subarea would be calculated as $(0.70 \times 13.0) + (0.30 \times 22.0) = 15.7$ lbs (7.1 kg).

Each of the methods for calculating the maximum length limit requires the use of specific assumptions for determining an average weight of halibut harvested in the guided sport fishery when anglers are limited to retaining one halibut that is no larger than the maximum length limit. The projected average weights determined by using these assumptions likely will not precisely equal the actual average weight of halibut harvested in the guided sport fishery under the maximum length limit. Method A and Method C assume that at least a portion of the halibut caught in the guided sport fishery in a future year will have the same average weight as halibut harvested in a previous year. If the CSP uses Method A or Method C and charter vessel anglers are able to increase the average size of halibut caught and retained under the maximum length limit relative to the previous year's harvest, calculation of the maximum length limit using the previous year's average size will result in underestimated guided sport harvest. This underestimated harvest will result in a calculated maximum length limit that is larger than the length limit that would be implemented under the larger average size of halibut. This relatively larger maximum length limit could result in the guided sport sector exceeding its catch limit. Conversely, if the average size of halibut caught and retained under the maximum length limit is lower than the average from the previous year's harvest, the maximum length limit calculated under Method A or Method C will result in overestimated guided sport harvest and a calculated maximum length limit that is smaller than the length limit that would be implemented under the smaller average size of halibut. Guided sport harvest may not reach the sector allocation under this relatively smaller maximum length limit.

Anglers may have the ability to increase the average size of halibut caught and retained under the maximum length limit by high-grading, or releasing smaller fish in order to retain larger fish. However, the ability of anglers to high-grade also depends on the availability of larger fish, which could change with natural variations in halibut stock composition, movements of fish, and the ability of the fleet to find or access areas where those fish are. Variability was observed in estimated average weights in the Area 2C guided halibut fishery even before bag limit changes were first enacted in 2007. Variability can be caused by a number of factors, including bias and sampling error in the collection of size data through creel surveys. It is not yet possible to accurately predict the amount or effect of high-grading based on average weight data. It is reasonable to assume, however, that imposition of a maximum length limit or a decrease in the maximum length limit may provide more incentive for anglers to retain the largest fish possible, and the assumption used in Method A that all halibut retained by guided sport anglers will be of the average size fish previously caught in the fishery may not be realistic.

On the other hand, Method B assumes that all halibut harvested in the guided sport fishery would be equal to the maximum length limit when anglers are limited to retaining one halibut that is no larger than a maximum length limit. Method B would likely overestimate guided sport harvest, however, because it is highly unlikely that all anglers would be able to catch and retain halibut that are precisely equal to the maximum length limit. Some anglers will undoubtedly retain halibut that are smaller than the maximum length limit, and guided sport harvest in net pounds will not always reach the projected guided sport harvest used to determine the maximum length limit under Method B. The overestimation of average weight using Method B would increase as the maximum length limit increases. The maximum length limit calculated under Method B would result in the most biologically conservative outcome among the three methods because it would result in a smaller maximum length limit than the limits that would result from using Methods A and C.

Method C assumes that a portion of the halibut harvested by guided sport anglers under the maximum length limit will be the average size previously

caught in the fishery, similar to Method A. As described for Method A, this could result in underestimated harvest for that portion of the halibut harvest if anglers are able to high-grade and increase the average weight of halibut harvested relative to the previous year. However, Method C uses the most biologically conservative Method B assumption for the remaining portion of halibut harvested in the previous year's fishery. Method C assumes that the portion of harvested halibut that were larger than the maximum length limit in the previous year would be equal to the maximum length limit for purposes of projecting guided sport harvest under the maximum length limit. As described for Method B, this could result in overestimated harvest for that portion of the halibut harvest. The net effect is that using both assumptions in Method C may balance the effects of Methods A and B. Method C will result in maximum length limits and projected guided sport harvests that are between those calculated using Methods A and B. Method C is likely to be less biologically conservative than Method B. Method C is likely to be more biologically conservative than Method A, especially when the daily bag limit is changed from one halibut of any size to one halibut with a maximum length limit, because anglers are presumed to already be high-grading under a one halibut of any size daily bag limit.

The consequences of projection errors vary by methods also. In January 2009, the Council's SSC noted that Method A would be expected to produce the least impact on the guided sport industry but the most impact on the halibut resource. Underestimated guided sport harvest due to changes in angler behavior under Method A could result in actual guided sport harvest exceeding the guided sport catch limit. While Method B uses a conservative approach by assuming that all charter vessel anglers will high-grade to the maximum length limit, it increases the likelihood that guided sport harvest will not reach the sector's catch limit because not all anglers will be able to high-grade to the maximum length limit. The SSC noted that the biologically conservative assumption used under Method B could result in an undesirable economic loss to the guided sport industry and a loss of opportunity to charter vessel anglers because the maximum length limit would be smaller than limits calculated using less biologically conservative assumptions. Method C balances the impacts of Method A and B on the halibut stock and guided sport fishery participants because it applies the assumptions used in both Method A and Method B.

The SSC suggested that the CSP could use an iterative approach to calculating maximum length limits for a few years in order to accommodate new information on angler behavior under maximum length limit restrictions. However, this suggestion is inconsistent with the Council's intent that the CSP would establish non-discretionary CSP restrictions for charter vessel anglers prior to the fishing season.

NMFS proposes that the CSP could use Methods A, B, or C to set maximum length limits when guided sport harvest is being constrained under the CSP management tier 1 or tier 2. This would include scenarios in which a bag limit of one halibut of any size per day is already in place and a maximum length limit is enacted for the first time, or a maximum length limit is in place but needs to be reduced because of a decline in the annual combined catch limit. However, neither Method A nor Method C would likely be appropriate for use in the situation where a maximum length limit has been in place for several years but needs to be increased due to an increase in the annual combined catch limit. These methods would require modification since there would not be recent information with which to predict the catch of fish in the gap between the original size limit and the new size limit. Method B could be applied to the proportion of the fish that were greater than the original size limit in these situations. If Method B were applied to all fish in year following a size limit produced using Methods A or C, use of the more conservative Method B could result in a decrease in the size limit even though the annual combined catch limit increased.

NMFS believes that conservation of the halibut resource should be a priority under the CSP. Although the assumption used in Method B that all halibut harvested would be of the maximum length may result in the guided sport sector harvesting less than its catch limit, NMFS believes this assumption maximizes the effectiveness of size limits in constraining guided sport halibut harvests at low levels of abundance. While NMFS intends for the CSP to accommodate the guided sport industry's need for predictability and stability, it believes that conservation of the halibut resource should be a priority under the CSP and is consistent with the purpose of the Convention. As such, NMFS proposes to use Method B, the most biologically conservative method, under the CSP. This proposal is consistent with a December 2007 Council statement in which it acknowledged that guided sport harvest may not precisely meet the sector allocation under the CSP. The Council statement of its management objectives for the CSP can be found at: *http://www.alaskafisheries.noaa.gov/npfmc/current_issues/halibut_issues/Halibutmotion1207_rev.pdf*. NMFS is requesting comments on the use of the proposed Methods A, B, or C, or on other potential methods, to establish maximum length limits under the CSP. NMFS specifically requests input on the underlying assumptions for each method and the resulting impacts on the halibut resource, participants in the guided sport fisheries, and other halibut user groups.

D. Other Restrictions Under the CSP

The proposed rule would prohibit a person from possessing on board a vessel halibut that are disfigured in a manner that prevents the determination of the number of halibut harvested by each person on board the vessel. However, NMFS proposes that under the CSP, charter vessel anglers may cut each retained halibut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with the skin on all pieces. This restriction is intended to enable charter vessel anglers to fillet halibut on board a vessel while maintaining enforcement agents' ability to verify angler compliance with CSP daily bag and possession limits by limiting the total number and type of halibut pieces each person may possess on board a vessel.

Beginning in 1997, the IPHC annual management measures implemented a prohibition in all waters of Alaska on filleting, mutilating, or otherwise disfiguring halibut in any manner that prevented the determination of the number of halibut caught, possessed, or landed. In 2007, the IPHC limited this prohibition to apply only on board the vessel on which the halibut were caught and retained. The 2007 annual management measures clarified that the prohibition would not apply once halibut was landed or offloaded from the vessel on which it was retained. The IPHC implemented this change to facilitate the processing of sport-caught halibut in Alaska for personal use.

The 2008 annual management measures modified the allowable condition of sport-caught halibut in a person's possession in waters in and off Alaska to add the exception that each halibut on board a vessel may be cut into no more than two ventral, two dorsal pieces, and two cheeks, with the skin on all pieces. The IPHC clarified, and NMFS agrees, that the restriction to cut halibut into identifiable dorsal,

ventral and cheek pieces improves identification of the number of retained halibut that are sport-caught in Alaska by facilitating enforcement of bag and possession limits. NMFS proposes to include these regulations in the Area 2C and Area 3A CSP proposed rule because they are necessary to implement and enforce the CSP restrictions in these areas. This inclusion will facilitate enforcement of CSP restrictions if the IPHC changes its recommended requirements for the allowable condition of sport-caught halibut in a person's possession in waters in and off Alaska in the future.

The restriction on cutting each retained halibut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with the skin on all pieces would apply each year under the CSP. In years where the CSP restriction includes a maximum length limit, NMFS proposes that each charter vessel angler also must retain the intact carcass (a carcass with the head attached to the tail) of the filleted halibut subject to the maximum length limit until all halibut fillets are offloaded from the vessel. As discussed in the ''CSP Restrictions'' section of this preamble, two CSP restrictions limit charter vessel anglers to retaining halibut of a maximum length. The first CSP restriction limits charter vessel anglers to retaining two halibut, one of which must be less than 32 inches, per day. The second CSP restriction limits charter vessel anglers to retaining one halibut of a maximum length limit per day. When either of these CSP restrictions is in effect, each charter vessel angler must retain the intact carcass of a filleted halibut subject to the size limit until all fillets are offloaded from the vessel. An intact carcass is required because enforcement officers cannot otherwise determine the head-on length of a halibut filleted at sea.

NMFS implemented the carcass retention requirement for charter vessel anglers in Area 2C in 2007 and 2008 when it limited the charter vessel anglers to retaining two halibut of any size per day, one of which had to be less than 32 inches (81.3 cm). The 2011 IPHC annual management measures also implemented the carcass retention requirement for Area 2C charter vessel anglers to facilitate enforcement of the 37 inch maximum length limit in effect for the 2011 fishing season.

Prior to development of this proposed rule for the CSP, NMFS published a final rule on May 6, 2009 (74 FR 21194), to implement along with other restrictions a prohibition on operator, guide, and crew retention of halibut in Area 2C. The proposed CSP would not modify this prohibition on retention of halibut in Area 2C and would implement the same prohibition in Area 3A. As noted in the EA/RIR/IRFA prepared for the CSP (see **ADDRESSES**), NMFS estimates that prohibiting retention of halibut by operators, guides, and crew reduces guided sport harvest by approximately 4.3 percent to 4.7 percent in Area 2C, and approximately 10.4 percent in Area 3A. The prohibition on retention of halibut by the operator, guide, and crew of a charter vessel is consistent with one of the CSP objectives, which is to limit guided sport halibut harvest to within the guided sport target harvest range.

The proposed rule would prohibit individuals who hold both a charter halibut permit and commercial halibut IFQ from fishing for commercial and guided sport halibut on the same vessel during the same day in Area 2C and Area 3A. NMFS implements this provision to facilitate enforcement, as different regulations would apply to guided sport-caught and commercially-caught halibut. This provision would not prevent an individual who holds both a charter halibut permit and commercial halibut IFQ from conducting guided sport operations and commercial operations on separate boats on the same day.

The proposed rule also would prohibit individuals who hold both a charter halibut permit and a Subsistence Halibut Registration Certificate from using both permits to harvest halibut on the same vessel during the same day in Area 2C and Area 3A. NMFS agrees with the Council that this prohibition is necessary to allow enforcement officials and samplers to classify harvest among the guided sport, subsistence, and commercial fisheries. Allowing multiple types of trips on a vessel in the same day could create uncertainty regarding how to classify retained halibut.

Enforcement of provisions prohibiting individuals from fishing for commercial and guided sport halibut or for subsistence and guided sport halibut on the same vessel during the same day in Area 2C and Area 3A, would require charter vessel operators to indicate the date of a charter vessel fishing trip in the ADF&G charter logbook and all of the required fields in the charter logbook must be completed before the halibut are offloaded. These requirements will enable enforcement agents to determine whether that vessel was used on a charter vessel fishing trip that day. If the charter logbook is properly and accurately completed and indicates that charter activity occurred on the vessel during a particular day on which halibut were retained, an enforcement agent would consider the retained halibut caught in the guided sport fishery.

VI. Guided Angler Fish (GAF)

The proposed CSP regulations would authorize supplemental, individual transfers of commercial halibut IFQ as guided angler fish (GAF) to charter halibut permit holders for harvest by charter vessel anglers in the guided sport halibut fishery. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to, or instead of, the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Transfers between commercial halibut IFQ and GAF would be effective for the current fishing season only, so transfers of IFQ to GAF would not be a permanent transfer of halibut IFQ from the commercial sector to the guided sport sector. This market-based aspect of the CSP allows the guided sport halibut sector to increase its halibut harvest beyond the area guided sport catch limit specified in the annual management measures up to limits imposed the unguided sport halibut fishery. In addition, this aspect of the CSP creates a system wherein the guided sport halibut sector compensates the commercial halibut sector for decreases in commercial halibut IFQ harvest.

Through the CSP GAF transfer program, qualified charter halibut permit holders in Area 2C and Area 3A may offer anglers on board their vessel the opportunity to retain up to two halibut of any size per day when the CSP restriction limits charter vessel anglers to a halibut harvest limit that is more restrictive than two halibut of any size per day. Charter vessel anglers may retain GAF to supplement halibut retained under the CSP restriction. However, charter vessel anglers retaining GAF may not exceed the harvest restriction in place for unguided sport anglers in that area. In other words, a charter vessel angler may retain as GAF a halibut that exceeds the daily bag limit and length restrictions triggered by the CSP only to the extent that the angler's halibut retained under the CSP restriction plus halibut retained as GAF do not exceed daily bag limit and length restrictions imposed on unguided anglers. For example, the daily halibut retention limit for unguided sport anglers in Area 2C and Area 3A is currently two halibut of any size per calendar day. Assuming this same unguided sport angler retention limit, charter vessel anglers would only retain GAF when the CSP restriction for that area limits guided sport anglers to

retaining less than two fish of any size per calendar day. The Council recommended this restriction on GAF use to maintain parity between guided and unguided sport halibut retention limits.

Table 13 presents the potential uses of GAF by charter vessel anglers in Area 2C and Area 3A under the proposed CSP restrictions, assuming that unguided sport anglers are limited to retaining two halibut of any size per calendar day.

TABLE 13—OPTIONS FOR GAF HARVEST UNDER CSP RESTRICTIONS

If the CSP restriction is:	and the harvest limit for unguided sport anglers is:	then each charter vessel angler could use GAF to retain:
one halibut of a maximum length	two halibut of any size	EITHER: one halibut less than or equal to the maximum length under the CSP restriction plus one GAF halibut of any size; OR two GAF halibut of any size.
one halibut of any size	two halibut of any size	one halibut of any size under the CSP restriction plus one GAF halibut of any size.
two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	two halibut of any size	one halibut greater than 32 inches in length under the CSP restriction plus one GAF greater than 32 inches.
two halibut of any size	two halibut of any size	N/A

N/A = not applicable.

The Council recommended including GAF in the Area 2C and Area 3A CSP to provide operating flexibility for participants in the commercial and guided sport halibut fisheries. The Council and NMFS determined that the GAF program could provide increased fishing opportunities in the guided sport fishery for those anglers desiring such an opportunity. The GAF program also would provide commercial halibut QS holders with greater flexibility when developing their annual harvest strategy. Persons holding halibut QS for an area have harvesting privileges for an amount of halibut that is derived annually from their QS holdings in that area and authorized on their IFQ permit. NMFS determines each person's amount of halibut IFQ (in net pounds) from the number of halibut QS units held, the total number of halibut QS units issued for that specific regulatory area, and the area's total allowable catch allocation for halibut IFQ and Community Development Quota fisheries (if applicable) in a particular year to determine the specific amount of halibut IFQ (in net pounds). As discussed above in the ''Annual Commercial Fishery and Guided Sport Fishery Catch Limits'' section, under the CSP, the IPHC determines the annual combined catch limit which then triggers the commercial catch limit (see Table 1 and Table 2). The opportunity for annual transfers of IFQ to GAF could provide some halibut IFQ holders with greater economic benefits than harvesting the IFQ themselves if they receive more revenue from transferring IFQ to GAF than they would receive from harvesting the IFQ themselves.

An IFQ holder is eligible to transfer halibut quota shares if such person holds at least one unit of halibut QS and has received an annual IFQ permit authorizing harvest of IFQ in either the Area 2C and Area 3A commercial halibut fishery. A charter halibut permit holder is eligible to receive IFQ as GAF if such a person holds one or more charter halibut permits in the management area that corresponds to the IFQ permit area from which the IFQ would be transferred.

Holders of military charter halibut permits would also be eligible to receive IFQ as GAF. Military charter halibut permits are issued to U.S. Military Morale, Welfare, and Recreation programs in Alaska that offer guided sport halibut fishing to service members in Area 2C or Area 3A. To operate a charter vessel, the U.S. Military Morale, Welfare, and Recreation program would need to obtain a military charter halibut permit by application to NMFS or could purchase a charter halibut permit on the commercial market.

Community Quota Entities holding community charter halibut permits are also eligible to receive IFQ as GAF. Regulations at 50 CFR 300.67(k)(2) list the communities that are eligible to receive community charter halibut permits from NMFS. In addition to community charter halibut permits, a Community Quota Entity may acquire non-community charter halibut permits by transfer. The final rule implementing the charter halibut limited access program describes community charter halibut permits and the application and eligibility requirements for Community Quota Entities to receive community charter halibut permits (75 FR 554, January 5, 2010).

There are several ways in which a Community Quota Entity in Area 2C or Area 3A that is eligible to receive community charter halibut permits and hold charter halibut permits could be a party to a GAF transaction. Community Quota Entities could receive a transfer of GAF for use on a community charter halibut permit or charter halibut permit that it holds. Community Quota Entities that are eligible to hold community charter halibut permits and charter halibut permits also are authorized to hold IFQ under the IFQ program by Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (69 FR 23681, April 30, 2004). Amendment 66 authorized Community Quota Entities to receive transferred halibut or sablefish QS on behalf of the community it represents and to lease the resulting IFQ to fishermen who are residents of that community. Thus, a Community Quota Entity holding IFQ would be eligible to transfer the IFQ as GAF to a holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit.

Regulations implementing the CSP would detail the requirements for a valid transfer of halibut IFQ to GAF. Both parties would complete and submit an application to NMFS to transfer halibut in net pounds between IFQ and GAF. NMFS would approve the

transfer provided that application is complete, both parties are eligible to transfer, and there are no other administrative reasons to disapprove the transfer.

NMFS would convert the number of GAF to be transferred to the charter halibut permit holder's GAF account into net pounds to be debited from the IFQ holder's account. To determine the number of net pounds to be debited from the IFQ account, NMFS would multiply the number of GAF to be transferred by the conversion factor for that year. The conversion factor for the current fishing year would be the ADF&G estimate of the average net weight calculated from all halibut harvested in the guided sport fishery during the preceding fishing year in that IPHC regulatory area. NMFS would post the conversion factors for Area 2C and Area 3A for the current fishing year on the NMFS Alaska Region Home Page at *http://www.alaskafisheries.noaa.gov* as soon as the average net weight estimates for Area 2C and Area 3A are available. NMFS anticipates it would post the conversion factor for the current fishing year in January each year.

Upon completion of the transfer between IFQ and GAF, NMFS would issue a GAF permit to the holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit. The GAF permit would be assigned to the charter halibut permit specified by the holder at the time of application. The GAF permit holder could offer GAF for harvest by charter vessel anglers on board the vessel on which the operator's GAF permit and the assigned charter halibut permit are used.

The charter halibut permit holder holding a GAF permit (GAF permit holder) and charter vessel angler would need to agree on any fees for harvesting the GAF. Depending on the structure of the payment, total costs to the GAF permit holder, charter vessel anglers or both could increase. While the market-based nature of IFQ to GAF transfers makes it likely that the cost of obtaining GAF would be borne by the charter vessel anglers using GAF, charter vessel anglers who want the opportunity to retain more halibut than permitted under the CSP restriction would have the opportunity to do so using GAF.

GAF permit holders would be required to hold a sufficient number of GAF for charter vessel anglers to retain halibut in excess of the CSP restriction and up to limits in place for the unguided sport halibut fishery for that area at the time any excess halibut are retained. The GAF permit holder also would be required to have the GAF permit and the assigned charter halibut permit on board the vessel on which charter vessel anglers retain GAF, and to present the permits if requested by an authorized enforcement officer. GAF permit holders that do not hold sufficient GAF to cover retained halibut by charter vessel anglers in excess of the CSP restriction may not allow anglers to retain those halibut. By midnight on the day on which GAF were retained, the GAF permit holder would be required to electronically report the total number of GAF retained under his or her GAF permit. NMFS would deduct this number of GAF from the GAF permit holder's account of unused GAF. NMFS proposes to require the GAF permit holder to complete a GAF electronic report by midnight on the day GAF were retained to maintain as close to real-time accounting of GAF balances as possible. Unharvested GAF could be returned to the IFQ permit holder from which it derived at any time during the fishing year if the GAF permit holder wishes to do so and the IFQ holder agrees to the return. The IFQ permit holder could then harvest the converted net pounds of halibut in the commercial fishery. Once the GAF were returned to the IFQ holder, it would not be available for harvest in the guided sport fishery unless the IFQ permit holder engaged in another transfer of IFQ to GAF. To approve and execute these returns of unharvested GAF to the IFQ permit holder, NMFS would need timely information on the harvest of GAF via electronic reporting by GAF permit holders.

The CSP regulations would also specify a mandatory GAF return date of 15 days prior to the end of the commercial halibut fishing season. The end of the commercial halibut fishing season would be specified in the IPHC annual management measures published by NMFS in the **Federal Register** each year. On this date GAF would no longer be authorized for use in the guided sport fishery. NMFS would return any remaining unharvested GAF to the IFQ holder from which it was derived. NMFS would not approve voluntary returns of GAF to IFQ after the mandatory GAF return date. NMFS recognizes that some GAF permit holders likely would have a balance of unharvested GAF at the end of the guided sport fishing season. The Council recommended and NMFS agrees that NMFS should return unused GAF 15 days prior to the end of the commercial halibut fishing season. Although the guided sport halibut fishery has typically been open from February 1 through December 31 in recent years, most fishing in the guided sport fishery occurs from May through August. ADF&G data for 2006 indicate that less than 1 percent of guided sport halibut harvest occurred after September 30, in either Area 2C or Area 3A. The commercial halibut fishing season typically opens in March and closes in mid-November. Based on this information, NMFS believes that NMFS should return remaining unused GAF to the IFQ permit holder 15 days prior to the end of the commercial halibut fishing season because it would not significantly affect charter vessel business operations in aggregate. Further, this timeline would provide the IFQ holder with an opportunity to harvest the IFQ before the end of the commercial fishing season for that year. The IFQ holder also may choose to count the IFQ returned from GAF toward an underage for his or her halibut IFQ account for the next fishing year, as specified in regulations at § 679.40(e). On or as soon as possible after the mandatory GAF return date, NMFS would convert GAF in number(s) of fish to IFQ in net pounds using the conversion factor for that year and return the converted IFQ to the IFQ holder's account.

The proposed rule would establish the following four elements for implementation of the GAF transfer program: (a) Eligibility criteria for halibut QS/IFQ holders and charter halibut permit holders to transfer between IFQ and GAF; (b) a process to complete a transfer between halibut IFQ and GAF; (c) GAF transfer limits; and (d) additional reporting requirements for guided sport operators whose clients retain GAF. Each of these elements is discussed in more detail below.

A. Eligibility Requirements To Transfer Between IFQ and GAF

NMFS will approve an application for transfer of IFQ and GAF between an eligible IFQ holder and an eligible holder of a charter halibut permit, community charter halibut permit, or military charter halibut permit if NMFS determines that (1) the transfer would not cause the IFQ holder or the GAF holder to exceed use limits specified for GAF at § 300.65 and halibut IFQ at § 679.42 (see ''GAF Transfer Restrictions'' section below); (2) there are no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit; and (3) other pertinent information requested on the application has been supplied.

NMFS would need to make additional determinations to approve a transfer between IFQ and GAF for a Community Quota Entity. In addition to the requirements listed above, NMFS would approve the transfer upon making a determination that: (1) the Community Quota Entity applying to transfer IFQ to GAF is eligible to hold and receive IFQ on behalf of a eligible community in Area 2C or Area 3A, as specified in 50 CFR 300.67(k)(2); (2) the Community Quota Entity applying to receive GAF from an Area 2C or Area 3A IFQ holder holds one or more community charter halibut permits or charter halibut permits for the corresponding area; and (3) the Community Quota Entity applying to transfer between IFQ and GAF has submitted a complete annual report(s) to NMFS as required by § 679.5(l)(8).

See the ''GAF Transfer Restrictions'' section for further discussion on the proposed regulations governing transfers between IFQ and GAF for Community Quota Entities.

B. Process To Complete a Transfer Between IFQ and GAF

The IFQ holder and the charter halibut permit holder receiving GAF would be required to complete and sign an application for transfer between IFQ (either IFQ to GAF or GAF to IFQ) prior to the automatic GAF return date. Application forms would be available on the NMFS, Alaska Region, Web site at *http://alaskafisheries.noaa.gov/*. Applications could be submitted by mail, hand delivery, or facsimile. Electronic submissions other than facsimile would not be acceptable because NMFS would require the original signature of the IFQ holder and the charter halibut permit holder. The applicants also would need to attest under penalty of perjury that legal requirements were met and all statements on the application are true, correct, and complete. The automatic return of GAF by NMFS on or around the automatic GAF return date each year would not require either party to complete a transfer application, and NMFS would not approve an application for transfer between IFQ and GAF after the automatic GAF return date.

Conversion Between IFQ and GAF. NMFS would issue GAF in numbers of halibut. NMFS CSP regulations would require that for each GAF transferred from an IFQ holder to a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut rounded to the nearest net pound (in whole numbers, not decimals) would be removed from an IFQ holder's IFQ account. Conversely, CSP regulations would require that for each GAF returned from a charter halibut permit holder's GAF account, the equivalent number of net pounds of halibut IFQ rounded to the nearest net pound would be returned to the IFQ holder's account. NMFS would use the average net weight of a halibut landed in the guided sport fishery in each area (2C or 3A) during the previous year, as determined by ADF&G, to convert GAF to equivalent net pounds of halibut IFQ rounded up to the nearest net pound. The same average net weight would be used for all conversions of IFQ to GAF and returns of GAF to IFQ in one year.

A request for transfer from IFQ to GAF would be made in numbers of fish, or the number of GAF to be transferred to the GAF permit holder. For example, if NMFS approved a transfer of 5 GAF and the conversion factor was 20.7 lbs (9.4 kg), then 104 lbs (47.2 kg) of IFQ would be debited from the IFQ holder's account (5 GAF × 20.7 lbs (9.4 kg) = 103.5 lbs (46.9 kg) and rounded to 104 lbs (46.9 kg)). NMFS would round up the conversion calculation (103.5 lbs (46.9 kg)) to the nearest pound (104 lbs (46.9 kg)) and debit that amount from the IFQ holder's account. NMFS accounts only for net pounds in whole numbers without decimals in the IFQ program and proposes to continue accounting in whole numbers of net pounds for transfers between IFQ and GAF.

A voluntary request for return of GAF to IFQ and the automatic return of GAF also would require NMFS to convert unharvested GAF to net pounds of IFQ. To calculate the number of net pounds of halibut IFQ returned to the IFQ holder, NMFS would multiply the unharvested number of GAF by the conversion factor and round up to the nearest pound. In the example used above, if the parties agreed to a voluntary return of 2 GAF to the IFQ holder, NMFS would return 42 lbs (19.1 kg) to the IFQ holder's account (2 GAF × 20.7 lbs (9.4 kg) = 41.4 lbs (18.8 kg) and rounded to 42 lbs (19.1 kg)). NMFS would make the same conversion calculation for automatic returns of unharvested GAF to IFQ.

GAF Permit. On approval of an application for transfer between IFQ and GAF, NMFS would issue a GAF permit to the charter halibut permit holder receiving GAF. A GAF permit would authorize the GAF permit holder to offer GAF to charter vessel anglers and allow charter vessel anglers to retain halibut in excess of the CSP restriction, up to limits on GAF use in regulations at § 300.65(c). GAF could be retained under a GAF permit only if, at the time the GAF are retained, the GAF permit holder's account contains at least the number of retained GAF. All GAF permits would expire at 11:59 p.m. on the day prior to the automatic GAF return date. GAF could not be retained by charter vessel anglers after the expiration of GAF permits.

NMFS would issue a revised GAF permit to the GAF permit holder each time during the year that it approved a transfer between IFQ and GAF for that GAF permit. Each GAF permit would be assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit in Area 2C or Area 3A. Charter halibut permit holders requesting GAF would be required to specify the charter halibut permit to which the GAF permit would be assigned on the application for transfer between IFQ and GAF. The assignment between a GAF permit and a charter halibut permit, community charter halibut permit, or military charter halibut permit could not be changed during that year. If charter vessel anglers retain GAF, the GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit would need to be on board the vessel on which the GAF halibut are retained, and available for inspection by an authorized enforcement officer.

C. GAF Transfer Restrictions

The Council recommended and NMFS proposes restrictions on the amount of IFQ that an IFQ holder could transfer as GAF and on the number of GAF that could be assigned to one GAF permit. The restrictions on transfers between IFQ and GAF are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive share of halibut fishing privileges as IFQ or GAF. The proposed rule would implement the Council's recommendations for three GAF transfer restrictions. First, IFQ holders would be limited to transferring up to 1,500 lbs (680.4 kg) or 10 percent, whichever is greater, of their annual halibut IFQ for use as GAF. Second, no more than a total of 400 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit that is endorsed for six or fewer anglers. Third, no more than a total of 600 GAF would be assigned during one year to a GAF permit assigned to a charter halibut permit endorsed for more than six anglers.

Commercial halibut IFQ regulations at § 679.42(f)(1)(i) and (ii) also include QS use limits that are intended to prevent a particular individual, corporation, or other entity from acquiring an excessive

share of commercial halibut fishing privileges. NMFS determines individual and collective interest in halibut fishing privileges by summing QS used by that person and a portion of any QS used by an entity in which that person has an interest. NMFS considers the person's portion of the QS used by the entity equal to the share of interest the person has in that entity. For example, if an individual uses 50,000 units of Area 2C halibut QS and has a 5 percent interest in a company that uses 750,000 units of Area 2C halibut QS, the amount of Area 2C halibut QS that person would be considered to use for purposes of the limits at § 679.42(f)(1)(i) and (ii) is 50,000 units (his personal holdings) plus 37,500 units (5 percent interest for the 750,000 units in the company using Area 2C halibut QS). This individual's use of 87,500 units would not exceed the Area 2C QS use limit of 599,799 units.

For purposes of administering the QS use limits at § 679.42(f)(1)(i) and (ii), NMFS proposes to include the QS equivalent of IFQ transferred to GAF in the calculation of a person's QS use. Using the example above, if the QS holder transferred the equivalent of 100 lbs (45.4 kg) of IFQ as GAF to a charter halibut permit holder, NMFS would continue to include the QS equivalent of the IFQ transferred to GAF in the calculation of that person's QS use for purposes of the QS use limits at § 679.42(f)(1)(i) and (ii). NMFS proposes this approach because it considers a transfer of IFQ to GAF a use of halibut QS. A transfer of IFQ to GAF would be voluntary, and the halibut QS holder likely would receive a benefit from the transfer according to the terms of the transfer agreement with the charter halibut permit holder receiving GAF. Furthermore, it is possible under the proposed CSP for a person to use halibut QS issued as IFQ and transferred to GAF in the commercial halibut fishery before the end of the fishing season if the IFQ was transferred to GAF, not harvested in the guided sport fishery, and returned to the QS holder. The proposed CSP specifies that any unused GAF derived from IFQ issued to the QS holder (1) may be voluntarily returned to the QS holder at any time during the fishing season prior to the mandatory GAF return date, and (2) would automatically be returned by NMFS to the QS holder on or as soon as possible after the mandatory GAF return date.

The proposed rule also would prohibit GAF, once transferred to a charter halibut permit holder, from being transferred to another charter halibut permit, community charter halibut permit, or military charter halibut permit holder. This requirement would prevent a charter halibut permit holder from receiving GAF by transfer with the intention of transferring the GAF to another charter halibut permit holder for compensation. The Council and NMFS generally recommend management provisions that encourage holders of harvest privileges to actively participate in the fishery for which they hold the privilege rather than receiving financial benefits from another person who pays to use those harvest privileges. The Council's recommendation and NMFS' proposal to prohibit GAF permit holders from transferring GAF to another charter halibut permit holder is consistent with this policy objective to require a charter halibut permit holder who receives GAF by transfer to utilize GAF in conjunction with their charter halibut permit.

Community Quota Entities and GAF

Under the proposed rule, a Community Quota Entity holding halibut IFQ in Area 2C or Area 3A would be authorized to transfer that IFQ as GAF. However, the Council recommended that transfers between IFQ and GAF for Community Quota Entities be exempt from GAF transfer restrictions in certain circumstances. The Regulatory Impact Review prepared for the CSP (see **ADDRESSES**) provided a general statement about the Council's intent for transfers between IFQ and GAF for Community Quota Entities (CQE):

> A CQE is allowed to lease 100 percent of the halibut they hold to eligible residents in their communities. This means a CQE may convert 100 percent of its annual IFQ to GAF for use on its halibut community harvest permit, may lease 100 percent of its IFQ out as GAF to another CQE, may lease 100 percent of its IFQ to community residents (subject to current holding limitations), or may lease GAF to its own community residents that hold community charter halibut permits.

NMFS agrees that Community Quota Entity transfers between IFQ and GAF should be exempt from GAF transfer restrictions in the instances described in the Regulatory Impact Review. Although the Council used the term ''eligible community resident'' in recommending exemptions to the GAF transfer restrictions for Community Quota Entities under the CSP, this term is not directly applicable to the charter halibut limited access program because businesses are expected to hold charter halibut permits. Although a business could be composed of an individual, it is possible for a business to be a partnership, corporation, or other legal entity. Therefore, NMFS is proposing that ''eligible community resident,'' for purposes of exempting from GAF transfer restrictions transfers of IFQ to GAF from a Community Quota Entity to an eligible community resident, means that the charter halibut permit holder receiving GAF from the Community Quota Entity must operate their business out of the community. Current regulations at 50 CFR 300.67(k)(5) require that every charter vessel fishing trip authorized by a community charter halibut permit must begin or end within the boundaries of the community represented by the Community Quota Entity holding the permit. The regulations do not require that an eligible community resident of the Community Quota Entity community use the community charter halibut permit.

NMFS proposes to apply the same requirement for using community charter halibut permits to the definition of eligible community resident for purposes of IFQ to GAF transfers involving Community Quota Entities. The proposed rule would revise the definition of eligible community resident for purposes of IFQ to GAF transfers under the Area 2C and Area 3A CSP. A person (either an individual or a non-individual entity) holding a charter halibut permit would need to either begin or end a charter vessel fishing trip authorized by their charter halibut permit within the boundaries of the community represented by the Community Quota Entity to qualify as an eligible community resident of that Community Quota Entity for purposes of IFQ to GAF transfers. If a Community Quota Entity transfers IFQ as GAF to an eligible community resident, the transfer would not be subject to the IFQ to GAF transfer restrictions.

Under the proposed rule, transfers between IFQ and GAF would be exempt from GAF transfer restrictions if a Community Quota Entity transfers IFQ as GAF to (1) itself for use with a charter halibut permit or a community charter halibut permit it holds; (2) a business operating out of the Community Quota Entity community that holds a charter halibut permit; or (3) another Community Quota Entity for use with a charter halibut permit or a community charter halibut permit held by the Community Quota Entity receiving GAF. All other transfers between IFQ and GAF by Community Quota Entities would be subject to the GAF transfer restrictions. NMFS believes that exempting Community Quota Entities from GAF transfer restrictions in these circumstances would provide a Community Quota Entity with more

flexibility in determining how to utilize its holdings of IFQ, community charter halibut permits, or charter halibut permits. These exemption provisions allow the Community Quota Entity to determine how to use halibut fishery privileges to maximize benefits for the Community Quota Entity community and its residents.

Although transfers between IFQ and GAF for Community Quota Entities would be exempt from GAF transfer restrictions in the circumstances described above, all transfers of IFQ to GAF in which the IFQ is held by a Community Quota Entity would be limited by an existing halibut IFQ regulation at § 679.42(f)(6). This regulation specifies that ''[n]o individual that receives IFQ derived from halibut QS held by a Community Quota Entity may hold, individually or collectively, more than 50,000 lbs (22.7 mt) of IFQ halibut derived from any halibut QS source.'' As described above, NMFS determines individual and collective ownership interest by summing IFQ held or used by that person and a portion of any IFQ held or used by an entity in which that person has an interest. NMFS considers the person's portion of the IFQ held or used by the entity equal to the share of interest the person has in that entity. For example, if an individual holds or uses 100 lbs (45.4 kg) of IFQ and has a 5 percent interest in a company that holds or uses 100 lbs (45.4 kg) of IFQ that was derived from halibut QS held by a Community Quota Entity, the amount of IFQ that person would be considered to hold for the IFQ limit calculation at § 679.42(f)(6) is 100 lbs (45.4 kg) (his personal holdings) plus 5 lbs (2.3 kg) (5 percent interest for the 100 lbs (45.4 kg) in the company holding IFQ). This individual's holdings of 105 lbs (47.6 kg) would not exceed the IFQ limit of 50,000 lbs (45.4 kg) for purposes of § 679.42(f)(6).

The Council recommended, and this rule proposes, to include GAF derived from halibut IFQ held by a Community Quota Entity in this individual and collective IFQ holding limit. Hence, the proposed rule would limit an individual receiving either IFQ or GAF derived from IFQ held by a Community Quota Entity to holding individually or collectively, no more than 50,000 lbs (45.4 kg) of halibut IFQ and GAF derived from the IFQ, combined. Thus, for an individual that holds GAF derived from IFQ held by a Community Quota Entity, IFQ derived from QS held by a Community Quota Entity, or both, NMFS would calculate that individual's total halibut IFQ and GAF holdings by (1) multiplying the total number of GAF held individually and collectively by the conversion factor for that year (see ''Conversion Between IFQ and GAF'' section above) to determine the equivalent number of halibut net pounds held, and (2) adding the equivalent number of halibut net pounds held to the total number of IFQ equivalent pounds held individually and collectively by that person.

D. GAF Reporting Requirements

The proposed rule would implement new recordkeeping and reporting requirements for GAF in ADF&G charter logbooks, in addition to charter logbook reporting requirements currently specified at § 300.65(d). The draft regulations also would require GAF permit holders to separately report retained GAF by midnight on the day the GAF were retained using a NMFS-approved electronic GAF reporting system.

The ADF&G charter logbook is the primary reporting requirement for operators in the guided sport fisheries for all species harvested in saltwater in Areas 2C and 3A. The ADF&G developed the charter logbook program in 1998 to provide information on actual participation and harvest by individual vessels and businesses in guided sport fisheries for halibut as well as other state-managed species. The charter logbook data are compiled to show where fishing occurs, the extent of participation, and the species and the numbers of fish caught and retained by individual anglers. This information is essential for regulation and management of the guided sport halibut fisheries in Area 2C and Area 3A. Since 1998, the charter logbook design has undergone annual revision, driven primarily by changes or improvements in the collection of fisheries data. In recent years, ADF&G has added charter logbook reporting requirements to accommodate information required to implement and enforce Federal guided sport halibut regulations, such as the Area 2C one-halibut per day bag limit and the charter halibut limited access program.

The proposed rule for the CSP would continue to require the ADF&G charter logbook as the primary reporting method for operators in the guided sport halibut fishery.

The proposed rule would require the person to whom ADF&G issued a charter logbook to retain and make available for inspection by authorized enforcement personnel completed original charter logbooks for a period of two years following the charter vessel fishing trip. This requirement would be necessary for enforcement of CSP restrictions and GAF reporting requirements.

For each charter vessel fishing trip on which charter vessel anglers retain GAF, charter vessel guides would be required to report in the charter logbook sheet completed for a charter vessel fishing trip (1) the GAF permit number under which the GAF were retained, and (2) the number of GAF retained by each charter vessel angler during the trip. For charter vessel fishing trips completed on a single day, charter vessel guides would be required by Federal regulations to complete these fields in the charter logbook before any halibut are offloaded and/or charter vessel anglers disembark from the vessel. For multi-day charter vessel fishing trips, charter vessel guides would be required to complete the GAF reporting requirements in a charter logbook on board the vessel by the end of each day of the trip. These charter logbook reporting requirements would facilitate GAF recordkeeping and enforcement of charter vessel angler daily bag and possession limits during a charter vessel fishing trip. NMFS also would use the GAF charter logbook reporting fields to verify information reported in the electronic GAF reporting system.

NMFS would use the electronic GAF reporting system to manage GAF accounts. Real-time reporting of GAF landings, and other GAF account and permit information is essential to support participant access to current account balances for account management and regulatory compliance, and for monitoring of account transfers and GAF landings history. Management personnel need real-time account information to manage permit accounts, conduct transfers, and assess fees. Enforcement personnel need real-time account information to monitor transfers between IFQ and GAF and monitor compliance with authorized GAF harvests and other program rules.

In the commercial IFQ program, regulations at 50 CFR 679.5(e) require that Registered Buyers report fisheries landings electronically using a secure, password-protected Internet-based system approved by NMFS. The final steps of the electronic IFQ reporting process generate a time-stamped receipt displaying landings data. Commercial Registered Buyers must print, and along with the individual IFQ fisherman, must sign copies of the receipt, which must be maintained and made available for a specified time period for inspection by authorized Agency personnel. Printing of this receipt indicates the report sequence is complete and the IFQ account(s) has been properly debited.

Under the CSP GAF program, NMFS would also require secure electronic reporting. Multiple technologies may be needed to provide essential services to a GAF fleet that would be widely distributed throughout remote locations in Area 2C and Area 3A. NMFS is proposing an Internet-based reporting system for the GAF electronic reporting program because that is likely to be the most efficient and convenient method for charter operators to report GAF given the prevalence of Internet use among the general public.

Although real-time data are necessary for accurate account management, the amount and type of data required for inseason GAF account management are relatively small and simple relative to that required for charter logbooks. GAF permit holders would be required to complete the GAF electronic report before midnight of each day on which a charter vessel angler retained GAF using their GAF permit even if the GAF permit holder is operating a multi-day charter vessel fishing trip.

The GAF permit holder would be required to record the following information in the GAF electronic reporting system: (1) ADF&G charter logbook number in which GAF were recorded; (2) Vessel identification number (State of Alaska issued boat registration number or U.S. Coast Guard documentation number) for the vessel on which GAF were retained; (3) GAF permit number used to retain GAF; (4) ADF&G Sport Fishing Guide license number held by the charter vessel guide who certified the ADF&G charter logbook sheet on which GAF were recorded; and (5) Total number of GAF caught and retained under the GAF permit number.

Charter vessel operators using a GAF permit assigned to a community charter halibut permit for a charter vessel fishing trip on which GAF were retained also would be required to report the community or port where the charter vessel fishing trip begins and ends.

Upon receipt of the daily electronic GAF report from a GAF permit holder, NMFS would respond with a confirmation number as evidence that the harvest report was received by NMFS and the GAF account was properly debited. The GAF permit holder would be required to enter the confirmation number in the charter logbook used on the vessel on the day the GAF were retained and recorded in the charter logbook. This record of confirmation number would allow cross-reference of the charter logbook data elements and the electronic GAF report by management and enforcement staff.

The Council also recommended, and NMFS proposes, that GAF permit holders would be required to allow ADF&G and IPHC scientific sampling personnel access to landed halibut on private property owned by the GAF permit holder. This provision is intended to facilitate monitoring of guided sport halibut harvest and the collection of scientific information from halibut harvested in the guided sport fishery. Current ADF&G guided sport halibut sampling programs collect size data from the sport halibut fishery, mainly at public access sites, with some exceptions in Area 2C. At this time, it is unknown whether the current public access ADF&G sampling sites would provide adequate or representative samples of halibut harvested in the guided sport fishery and landed at other locations, such as lodges in remote areas. The proposed access requirements to halibut landing locations on private property could provide additional scientific data by providing additional samples of halibut retained in the guided sport fisheries in Area 2C and Area 3A. Persons who do not wish to have ADF&G and IPHC samplers on their property have the option to not allow GAF to be landed on their property. The Council's motion is specific to GAF, and persons that do not allow GAF to be landed on their property are not required to allow scientific sampling personnel access to their property. However, if at any time private property owners allow GAF to be landed on their property, they would be subject to the access requirements.

The Council also recommended that GAF permit holders landing GAF on their private property be required to allow enforcement personnel access to the point of landing. The Council recognized, and NMFS agrees, that enforcing the CSP restrictions and GAF use restrictions would require enforcement staff to track the retention of halibut by all charter vessel anglers in the guided sport fishery, including anglers landing halibut on private property. However, section 773i of the Halibut Act provides enforcement staff with this authorization and additional regulations are not necessary for the CSP. Section 773i(b) of the Halibut Act states that any authorized officer may, at reasonable times enter, and search or inspect, shoreside facilities in which fish taken subject to the Convention or the Halibut Act are processed, packed or held. NMFS notes that this authorization applies to shoreside facilities in any IPHC regulatory area in which halibut are taken. Additionally, the authorization applies to shoreside facilities to which all halibut are landed or taken and is not specific to GAF halibut. An authorized officer means any officer authorized by (1) the Secretary of Commerce, including any special agent or fisheries enforcement officer of NMFS, (2) the Secretary of the department in which the United States Coast Guard is operating, or (3) the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Commandant of the United States Coast Guard to enforce the provisions of any statute administered by the Secretary of Commerce, including the Halibut Act.

VII. Cost Recovery for GAF

The Magnuson-Stevens Fishery Conservation and Management Act (MSA) at section 304 (d)(2)(A) requires that cost recovery fees be collected for the costs of managing and enforcing limited access privilege programs. This includes programs such as the commercial halibut IFQ program, under which a dedicated allocation is provided to IFQ permit holders. Fees owed are a percentage, not to exceed three percent, of the ex-vessel value of fish landed and debited from IFQ permits. Each year, NMFS sends fee statements to IFQ holders whose annual IFQ was used; and those holders must remit fees by January 31 of the following year. The fee percentage has rarely exceeded two percent of the ex-vessel value of sablefish and halibut landings.

NMFS does not expect allocation of additional funds to support the GAF program other than those derived from IFQ cost recovery fees. Therefore, under the proposed rule, the commercial IFQ holder would be responsible for all cost recovery fees on IFQ equivalent pounds harvested for their IFQ permit(s) and also for net pounds transferred and harvested as GAF which originated from their IFQ account(s). NMFS will levy IFQ cost recovery fees on all net pounds of halibut harvested as IFQ in the commercial fishery and as GAF in the guided sport fishery.

The IFQ permit holders who transfer IFQ to GAF would owe cost recovery fees for those GAF retained in the guided sport fishery. Fees for unharvested GAF converted back to IFQ equivalent pounds and harvested as commercial IFQ pounds would be assessed fees as commercial landings with value estimated as specified in current regulations at § 679.45. IFQ holders might share these costs with GAF users through contractual agreements. IFQ and GAF that are not harvested during the year would not be subject to the cost recovery fee. Fish harvested in excess of the amount

authorized by a GAF permit, or in excess of allowed IFQ permit overages, would not result in cost recovery fees owed because such overages would be handled as enforcement actions.

NMFS establishes commercial cost recovery fee assessments in November each year. To determine cost recovery fee liabilities for IFQ holders, NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices by month and port (or, if confidential, by port group). NMFS publishes these standard prices in the **Federal Register** each year. NMFS published the 2010 standard ex-vessel IFQ prices in the **Federal Register** on December 10, 2010 (75 FR 76957). NMFS uses the standard prices to compute the total annual value of the IFQ fisheries. NMFS determines the fee percentage by dividing actual total management and enforcement costs by total IFQ fishery value. Only those halibut and sablefish holders who had landings on their permits owe cost recovery fees. Fees owed by an IFQ holder are the computed annual fee percentage multiplied by the value of their IFQ landings.

NMFS would also apply the standard ex-vessel values computed for commercial IFQ harvests to harvest of GAF fish. The proposed regulations specify that the IFQ permit holder may not challenge the standard ex-vessel value applied to GAF landings by NMFS.

Only ''incremental'' costs, those incurred as a result of IFQ management that includes a GAF component, are assessable as cost recovery fees. Under the proposed rule, NMFS would determine the cost recovery liability for IFQ permit holders based on the value of all landed IFQ and GAF derived from his or her IFQ permits. NMFS would convert landings of GAF in Area 2C or Area 3A to IFQ equivalent pounds as specified in the ''Conversion Between IFQ and GAF'' section above, and multiply the IFQ equivalent pounds by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF. The value of IFQ landed as GAF as based on NMFS' standard prices would be added to the value of the IFQ permit holder's landed IFQ, and the sum would be multiplied by the IFQ fee percentage to estimate the person's IFQ fee liability.

VIII. Technical Regulatory Changes

This action proposes three technical changes to the regulations. The first proposed change would clarify the regulations to describe the current process by which the IPHC Area 4 catch sharing plan is promulgated. The Area 4 catch sharing plan was codified in Federal regulations at § 300.65(b) in 1998. The Area 4 catch sharing plan allocates the Area 4 commercial catch limit among Areas 4C, 4D, and 4E. Each year, the Area 4 catch sharing plan subarea allocations are applied to the Area 4 commercial catch limit recommended by the IPHC and published in the final rule implementing the annual management measures. The proposed regulatory change would clarify the description of this process in § 300.65(b).

The second proposed technical change would update instructions in regulations at § 679.5(l)(7) for Registered Buyers to complete and submit the Registered Buyer Ex-vessel Value and Volume Report form. Registered Buyers submit this form to NMFS to report ex-vessel IFQ prices by month and port. NMFS uses data reported by Registered Buyers to compute annual standard ex-vessel IFQ prices to determine cost recovery fee liabilities for IFQ holders.

The third proposed technical change would revise regulations at § 679.45(a)(4) to update instructions for IFQ permit holders for submitting cost recovery fee payments to NMFS. NMFS proposes to update the fee payment form and instructions to incorporate GAF in the calculation of an IFQ permit holder's cost recovery fee liability.

IX. Classification

The NMFS Assistant Administrator has determined that this proposed rule is necessary for the conservation and management of the halibut fishery and that it is consistent with the Halibut Act and other applicable law, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule also complies with the Secretary of Commerce's authority under the Halibut Act to implement management measures for the halibut fishery.

An initial regulatory flexibility analysis (IRFA) was prepared as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action may be found at the beginning of this preamble. A summary of the IRFA follows. Copies of the IRFA are available from the Council or NMFS (see **ADDRESSES**).

The action would establish a CSP for the commercial and guided sport halibut fisheries in Area 2C and Area 3A. In addition to establishing allocations to each sector, the Council's preferred alternative (Alternative 3) would establish a new management system for the guided sport halibut fishery in these areas. Beginning February 1, 2011, operators of vessels with charter vessel anglers on board were required to have on board the vessel a valid charter halibut permit issued by NMFS. Therefore, the universe of regulated entities for the proposed CSP would be the holders of one or more charter halibut permits in Area 2C and Area 3A. NMFS estimates that 229 businesses were issued charter halibut permits in Area 2C and 291 businesses were issued charter halibut permits in Area 3A. However, most charter halibut permits are transferable. A charter halibut permit holder may transfer a transferable permit, subject to NMFS approval, to a qualified person at any time. Thus, the exact number of businesses that would be regulated by the proposed CSP cannot be determined at this time.

The Small Business Administration (SBA) specifies that for marinas and charter or party vessels, a small business is one with annual receipts less than $6.0 million. The largest of these charter vessel operations, which are lodges, may be considered large entities under SBA standards, but that cannot be confirmed because NMFS does not collect economic data on lodges. Thus, all charter vessel operations regulated by the proposed CSP would likely be considered small entities, based on SBA criteria, because they would be expected to have gross revenues of less than $6.0 million on an annual basis.

Regulations that directly regulate entities representing small, remote communities in Areas 2C and 3A are included in this action. These regulations would authorize community quota entities holding community charter halibut permits or charter halibut permits to transfer or receive commercial halibut IFQ as GAF as proposed under the CSP. GAF would offer charter vessel anglers in Area 2C or Area 3A an opportunity to harvest halibut in addition to the halibut harvested under the CSP restriction, up to the harvest limits in place for unguided sport anglers in that area. Under the preferred alternative, 18 Area 2C communities are eligible to each receive up to 4 halibut community charter halibut permits; 14 Area 3A communities are eligible to each receive up to 7 halibut community charter halibut permits. Note that eligibility for community charter halibut permits is conditioned on the fact that the community must be represented by a

non-profit community quota entity approved by NMFS. Thus, the number of eligible community entities that would be authorized by the proposed action to engage in GAF transfers is a maximum estimate. All of these eligible communities would be considered small entities under the SBA definitions.

This action would impose new recordkeeping requirements. Applications to transfer between IFQ and GAF would be required to be submitted to and approved by NMFS for each transfer from IFQ to GAF and for each transfer from GAF to IFQ prior to the automatic GAF return date for that year. The application would require information about the IFQ permit holder and the charter halibut permit holder, including each permit holder's contact information and the IFQ permit account from which halibut pounds are to be transferred and the GAF account to which GAF are to be transferred. NMFS would require additional information only when the structure of the business holding the IFQ or charter halibut permit changes. NMFS also may require some additional information, depending on how well the current ADF&G charter logbooks meet management and enforcement needs and the level of access NMFS has to those data. In addition, community quota entities eligible to receive community charter halibut permits would be required to submit information to NMFS (1) on the application for a transfer between IFQ and GAF, and (2) regarding the Community Quota Entity's activity in an annual report by January 31 of the following year. The proposed recordkeeping and reporting requirements would not likely represent a ''significant'' economic burden on the small entities operating in this fishery.

NMFS has not identified other Federal rules that may duplicate, overlap, or conflict with the proposed rule.

An IRFA is required to describe significant alternatives to the proposed rule that accomplish the stated objectives of the Halibut Act and other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities.

The status quo alternative specifies the GHL as a target amount of halibut that anglers in the guided sport fishery can harvest in Area 2C and Area 3A. However, guided sport harvests that exceed the GHL can have a *de facto* allocation effect of reducing the amount of halibut that may be harvested by the commercial fishery. Additionally, guided sport halibut fishery harvests beyond the GHL also can undermine overall harvest strategy goals established by the IPHC for the halibut resource. The primary objective of the proposed action is to implement a management program for the Area 2C and Area 3A guided sport and commercial halibut fisheries that establishes a clear allocation to each sector and implements management measures that are intended to limit halibut harvest in the guided sport fisheries to within the guided sport target harvest range.

The Council considered one alternative to the status quo (Alternative 2) in addition to the preferred alternative (Alternative 3) for the proposed CSP. The Council selected Alternative 3 from the elements and options considered under Alternative 2, along with program elements that resulted from Council discussion, additional staff research, and public testimony. The Council determined that Alternative 3 would meet its objective to establish a catch sharing plan for the commercial and guided sport sectors by managing the guided sport halibut fishery to ensure that harvests stay within the sector's allocated range. The Council also considered the guided sport sector's need to have a stable in-season regulatory environment. Management of the guided sport sector under Alternative 3 is intended to ensure that it is given advance notice and predictability with respect to application of management tools (*e.g.,* bag limits, size restrictions) and season length. Alternative 3 would implement annual management measures for the guided sport sector that are specified prior to the beginning of the fishing season. NMFS agrees that the annual implementation of the CSP under Alternative 3 likely would be timely and responsive to changes in halibut abundance while providing the guided sport sector with advance notice of the effective guided sport fishery management measures.

Alternative 2 included three options for establishing an allocation between the guided sport and commercial halibut sectors in Area 2C and Area 3A. These options included allocating (1) fixed percentage of the annual combined catch limit to each sector; (2) a fixed number of pounds to the guided sport sector; and (3) a fixed number of pounds in addition to a specified percentage of the annual combined catch limit to the guided sport sector. After considering average guided sport harvest estimates for individual years and for different combinations of years from 1995 through 2005 in the Alternative 2 options, the Council recommended implementing a fixed percentage of the annual combined catch limit to each sector in Alternative 3 for the proposed CSP. The Council determined that a fixed percentage allocation best met its objectives with the least impact to affected entities. Additionally, a fixed percentage allocation would be equitable because both the commercial and guided sport sectors would be on an equal footing concerning the impacts and effects of accounting for other removals and applying IPHC harvest policy. Thus, both the guided sport and commercial sectors would share in the benefits and costs of managing the resource for long-term sustainability under a combined catch limit.

Alternative 2 included eight options for limiting guided sport harvest to the sector's catch limit under the CSP. The Council recommended limiting CSP restrictions to daily bag limits and daily bag limits in combination with a maximum size limit. The Council elected not to recommend trip limits or season closures as CSP restrictions because it aimed to provide predictability and stability for the guided sport sector to the extent practicable under the CSP. Additionally, daily bag limits and maximum size limits impact all charter vessel anglers equally, so the impact of the CSP restriction would not fall disproportionately on specific types of charter vessel operations.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. The collections are listed below by OMB control number.

OMB Control No. 0648–0398

Public reporting burden per response is estimated to average 2 hours for IFQ Fee Submission Form; 2 hours for IFQ Registered Buyer Ex-Vessel Volume and Value Report.

OMB Control No. 0648–0575

Public reporting burden per response is estimated to average 4 minutes for ADF&G Logbook Entry for vessel guide and submittal; 1 minute for ADF&G Logbook Entry for anglers and signature; and 4 minutes for Data Entry in GAF electronic reporting system.

OMB Control No. 0648–0592

Public reporting burden per response is estimated to average 15 minutes for an Application for Transfer Between IFQ and GAF; and 15 minutes for an Application for Transfer Between IFQ

and GAF by a Community Quota Entity (CQE).

OMB Control No. 0648–0272

The IFQ Permit is mentioned in this proposed rule; however, the public reporting burden for the IFQ permit in this collection-of-information is not directly affected by this proposed rule.

Public reporting burden includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to NMFS at the above address, and by e-mail to *OIRA_Submission@omb.eop.gov,* or fax to 202–395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, 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 (PRA), unless that collection of information displays a currently valid OMB control number.

This proposed rule is consistent with Executive Order 12962 as amended September 26, 2008, which required Federal agencies to ensure that recreational fishing is managed as a sustainable activity and is consistent with existing law.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Antarctica, Canada, Exports, Fish, Fisheries, Fishing, Imports, Indians, Labeling, Marine resources, Reporting and recordkeeping requirements, Russian Federation, Transportation, Treaties, Wildlife.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: July 14, 2011.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 679 as follows:

50 CFR Chapter III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

Subpart E—Pacific Halibut Fisheries

1. The authority citation for part 300, subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

2. In § 300.61:

a. Remove the definition for ''Guideline Harvest Level (GHL)'';

b. Revise the definition for ''Individual Fishing Quota (IFQ)''; and

c. Add definitions for ''Annual combined catch limit'', ''Annual commercial catch limit'', ''Annual guided sport catch limit'', ''Guided Angler Fish (GAF)'', ''GAF permit'', and ''GAF permit holder'' to read as follows:

§ 300.61 Definitions.

* * * * *

Annual combined catch limit, for purposes of commercial and sport fishing in Area 2C and in Area 3A, means the annual total allowable halibut harvest by persons fishing IFQ and by charter vessel anglers.

Annual commercial catch limit, for purposes of commercial fishing in waters in and off Alaska, means the annual total allowable halibut harvest by persons fishing IFQ halibut, CDQ halibut, and GAF.

Annual guided sport catch limit, for purposes of sport fishing in Area 2C and in Area 3A, means the annual total allowable halibut harvest by charter vessel anglers, except GAF harvested by charter vessel anglers, as determined in § 300.65(c)(4).

* * * * *

Guided Angler Fish (GAF) means halibut transferred annually from an Area 2C or Area 3A IFQ permit holder to a GAF permit that is issued to a person holding a charter halibut permit, community charter halibut permit, or military charter halibut permit for the corresponding area.

GAF permit means an annual permit issued by the National Marine Fisheries Service pursuant to § 300.65(c)(6)(iii).

GAF permit holder means the person identified as the GAF permit holder on a GAF permit.

* * * * *

Individual Fishing Quota (IFQ), for purposes of this subpart, means the annual catch limit of halibut that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the annual commercial catch limit of halibut.

* * * * *

3. In § 300.65, revise paragraphs (b), (c), and (d) to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

* * * * *

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual commercial catch limit among Areas 4C, 4D, and 4E and will be promulgated by the Commission as annual management measures and published in the **Federal Register** as required in § 300.62.

(c) *Catch sharing plan (CSP) for Area 2C and Area 3A*—(1) *General.* The Area 2C and Area 3A catch sharing plan:

(i) Allocates the annual combined catch limit for Area 2C and Area 3A between the annual commercial catch limit and the annual guided sport catch limit for the halibut commercial fishing and sport fishing seasons, pursuant to paragraphs (c)(3) and (4) of this section;

(ii) Establishes CSP restrictions for charter vessel anglers in Area 2C and in Area 3A at specified annual combined catch limit levels, pursuant to paragraph (c)(5) of this section; and

(iii) Authorizes the use of Area 2C and Area 3A halibut IFQ as guided angler fish (GAF) for harvest by charter vessel anglers in the corresponding area, pursuant to paragraph (c)(6) of this section.

(2) *Implementation.* The Area 2C and Area 3A CSP annual catch limits and CSP restrictions for charter vessel anglers are promulgated by the Commission as annual management measures and published by NMFS in the **Federal Register** as required in § 300.62.

(3) *Annual commercial catch limits*—(i) The Area 2C and Area 3A annual commercial catch limits are determined pursuant to Tables 1 and 2 of this subpart E, promulgated by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Commercial fishing in Area 2C and Area 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 679, subparts A, B, D, and E.

(4) *Annual guided sport catch limits*—(i) The Area 2C and Area 3A annual guided sport catch limits are determined pursuant to Tables 3 and 4 of this

subpart E, promulgated by the Commission as annual management measures, and published in the **Federal Register** as required in § 300.62.

(ii) Sport fishing by charter vessel anglers in Area 2C and Area 3A is governed by the Commission's annual management measures and by regulations at 50 CFR part 300, subparts A and E.

(5) *CSP restrictions for charter vessel anglers in Area 2C and Area 3A*—(i) *General.* CSP restrictions for charter vessel anglers in Area 2C and Area 3A are determined annually in accordance with this section (§ 300.65(c)(5)). NMFS recommends CSP restrictions to the Commission as annual management measures, and publishes the annual management measures in the **Federal Register** as required in § 300.62.

(ii) The CSP restrictions in Area 2C and Area 3A are determined annually using:

(A) The annual combined catch limit for each area determined by the Commission, and

(B) The projected charter vessel anglers' harvest of halibut for each area. The projected charter vessel anglers' harvest of halibut for each area is:

(*1*) Prepared based on the appropriate CSP restriction for Area 2C and Area 3A, as determined by Tables 5 and 6 of this subpart E; and

(*2*) Expressed as a percentage of the annual combined catch limit for each area.

(iii) *CSP restrictions.* The CSP restrictions for charter vessel anglers in Area 2C and Area 3A are determined annually by Tables 5 through 8 of this subpart E.

(A) *Maximum length limit under one-halibut daily bag limit.* If the default CSP restriction for charter vessel anglers in Area 2C or Area 3A, as determined by Column 3 in Tables 5 and 6 of this subpart E, limits the number of halibut that may be caught and retained per calendar day by each charter vessel angler to no more than one, the CSP restriction for that area also may include a maximum length limit, to be determined as follows:

(*1*) If the projected charter vessel anglers' harvest of halibut under the default CSP restriction as a percentage of the annual combined catch limit for an area is greater than the largest value of the target harvest range around the guided sport catch limit for that area, as determined by Column 6 in Tables 5 and 6 of this subpart E, then the CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler in that area is limited to no more than one halibut of a maximum length, as determined in paragraph (c)(5)(iii)(C) of this section.

(*2*) If the projected charter vessel anglers' harvest of halibut under the default CSP restriction as a percentage of the annual combined catch limit for an area is less than or equal to the largest value of the target harvest range around the guided sport catch limit for that area, as determined by Column 6 in Tables 5 and 6 of this subpart E, then the CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler in that area is limited to no more than one halibut of any size.

(B) For purposes of this section (§ 300.65(c)(5)(iii)), the following terms are defined as:

(*1*) C = Annual guided sport catch limit in pounds for Area 2C or Area 3A as determined in paragraph (c)(4) of this section.

(*2*) H_p= Projected charter vessel anglers' harvest of halibut in numbers of fish for Area 2C or Area 3A.

(*3*) w_p= Average net weight in pounds of all halibut harvested in Area 2C or Area 3A.

(*4*) W = Currently effective Commission equation to convert halibut length to weight under a length limit assuming that all charter vessel anglers in the respective area retain halibut of the maximum head-on length L_{cm} and expressed as:

$$W = xL_{cm}{}^{y}$$

(*5*) L_{cm}= Maximum allowable length in centimeters of one halibut caught and retained per calendar day by each charter vessel angler in Area 2C or Area 3A calculated from the currently effective Commission equation to convert halibut length to weight (W).

(*6*) L_{in}= Maximum allowable length in whole inches (no fractions of an inch) of one halibut caught and retained per calendar day by each charter vessel angler in Area 2C or Area 3A, as determined in paragraphs (c)(5)(iii)(C)(1) through (4) of this section.

(C) As determined by Tables 5 and 6 of this subpart E, each charter vessel angler in Area 2C or Area 3A is limited to catching and retaining one halibut per calendar day with a maximum head-on length of L_{in}. L_{in} is the length limit calculated and rounded down to the nearest whole inch as follows:

(*1*) Calculate the average weight (w_p) of projected charter vessel anglers' harvest of halibut in numbers of fish (H_p) that results in the annual guided sport catch limit (C):

$$C = H_p w_p$$

(*2*)

$$\frac{C}{H_p} = w_p$$

(*3*) Substitute W for w_p and solve for L_{cm}:

$$xL_{cm}{}^{y} = w_p$$

(*4*) Multiply L_{cm} by 0.39 and round down to the nearest whole inch and solve for L_{in}:

$$0.39L_{cm} = L_{in}$$

(6) *Guided Angler Fish (GAF).* This paragraph (§ 300.65(c)(6)) governs the transfer of Area 2C and Area 3A halibut individual fishing quota (IFQ) to guided angler fish (GAF), the issuance of GAF permits, and GAF use.

(i) *General*—(A) GAF is derived from halibut IFQ that is transferred from an Area 2C or Area 3A IFQ permit account held by a person who also holds quota share (QS), as defined in § 679.2 of this title, to a GAF permit account held by a GAF permit holder in the same regulatory area.

(B) A GAF permit authorizes a charter vessel angler to retain GAF on board a vessel in the area specified on a GAF permit:

(*1*) During the sport halibut fishing season promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, and

(*2*) Subject to the GAF use restrictions at paragraphs (c)(6)(iv)(A) through (I) of this section.

(C) On or after 15 days prior to the closing of the commercial halibut fishing season each year, NMFS will return unharvested GAF to the IFQ permit account from which the GAF were derived, subject to paragraph (c)(6)(ii) of this section and underage provisions at § 679.40(e) of this title.

(ii) *Transfer Between IFQ and GAF*—(A) *General.* A transfer between IFQ and GAF means any transaction in which halibut IFQ passes between an IFQ permit holder and a GAF permit holder as:

(*1*) A transfer of IFQ to GAF, in which halibut IFQ equivalent pounds, as defined in § 679.2 of this title, are transferred from an Area 2C or Area 3A IFQ permit account, converted to number(s) of GAF as specified in paragraph (c)(6)(ii)(F) of this section, and assigned to a GAF permit account in the same management area;

(*2*) A transfer of GAF to IFQ, in which GAF in number(s) of fish are transferred from a GAF permit account in Area 2C or Area 3A, converted to IFQ equivalent pounds as specified in paragraph (c)(6)(ii)(F) of this section, and assigned

to the same IFQ permit account from which the GAF were derived; or

(*3*) The return of unharvested GAF by NMFS to the IFQ permit account from which it was derived, on or after 15 days prior to the closing of the commercial halibut fishing season.

(B) *Transfer procedure*—(*1*) *Application for Transfer Between IFQ and GAF.* A transfer between IFQ and GAF before 15 days prior to the closing of the commercial halibut fishing season requires Regional Administrator review and approval of a complete Application for Transfer Between IFQ and GAF. Both the transferor and the transferee are required to complete and sign the application. The Regional Administrator shall provide an Application for Transfer Between IFQ and GAF on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov/ram/default.htm.* An Application for Transfer Between IFQ and GAF is not required for the return of unharvested GAF by NMFS to the IFQ permit account from which it was derived, on or after 15 days prior to the closing of the commercial halibut fishing season for that year.

(*2*) *Application timing.* The Regional Administrator will not approve an Application for Transfer Between IFQ and GAF before annual IFQ is issued for each year or after the automatic GAF return date, which is 15 days prior to the end of the commercial halibut fishing season for that year.

(*3*) *Notification of decision on application*—(*i*) Persons who submit an Application for Transfer Between IFQ and GAF to the Regional Administrator for approval will receive notification of the Regional Administrator's decision to approve or disapprove the application.

(*ii*) NMFS will provide the reason(s) for disapproval of an Application for Transfer Between IFQ and GAF by mail posted on the date of that decision.

(*iii*) Disapproval of an Application for Transfer Between IFQ and GAF may be appealed pursuant to § 679.43 of this title.

(*iv*) The Regional Administrator will not approve a transfer between IFQ and GAF on an interim basis if an applicant appeals a disapproval of an Application for Transfer Between IFQ and GAF pursuant to § 679.43 of this title.

(*4*) *IFQ and GAF accounts*—(*i*) IFQ and GAF accounts affected by either a Regional Administrator approved Application for Transfer Between IFQ and GAF or a return of unharvested GAF to IFQ by NMFS on or after 15 days prior to the closing of the commercial halibut fishing season will change on the date of approval or return. Any necessary permits will be sent with the notification of the Regional Administrator's decision on the Application for Transfer Between IFQ and GAF.

(*ii*) On approval of an Application for Transfer Between IFQ and GAF for an initial transfer from IFQ to GAF, NMFS will establish new GAF accounts for GAF applicants account and issue the resulting new GAF and IFQ permits. If a GAF account already exists from a previous transfer from the same IFQ account in the corresponding management area in that year, NMFS will modify the GAF recipient's GAF account and the IFQ transferor's permit account and issue modified GAF and IFQ permits upon approval of an Application for Transfer Between IFQ and GAF.

(*iii*) On or after 15 days prior to the closing of the commercial halibut fishing season, NMFS will convert unharvested GAF from a GAF permit account back into IFQ equivalent pounds as specified in paragraph (c)(6)(ii)(F)(*2*) of this section, return the resulting IFQ equivalent pounds to the IFQ permit account from which the GAF were derived, and close the GAF permit account to voluntary transfers for that year, unless prevented by regulations at 15 CFR part 904.

(C) *Complete application.* Applicants must submit a completed Application for Transfer Between IFQ and GAF to the Regional Administrator as instructed on the application. NMFS will notify applicants with incomplete applications of the specific information necessary to complete the application.

(D) *Application for Transfer Between IFQ and GAF approval criteria.* An Application for Transfer Between IFQ and GAF will not be approved until the Regional Administrator has determined that:

(*1*) The person applying to transfer IFQ to GAF or receive IFQ from a transfer of GAF to IFQ:

(*i*) Possesses halibut quota share (QS), as defined in § 679.2 of this title, in Area 2C or Area 3A; and

(*ii*) Has been issued an annual IFQ Permit for Area 2C or Area 3A, as defined in § 679.4(d)(1) of this title, resulting from that halibut QS.

(*2*) The person applying to receive or transfer GAF possesses a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the Commission management area (2C or 3A) that corresponds to the IFQ permit area from or to which the IFQ will be transferred.

(*3*) The person applying to receive GAF or IFQ currently exists at the time of approval of the transfer.

(*4*) Other pertinent information requested on the Application for Transfer Between IFQ and GAF has been supplied to the satisfaction of the Regional Administrator.

(*5*) For a transfer of IFQ to GAF:

(*i*) The person applying to transfer IFQ must hold at least one unit of halibut QS in either Area 2C and Area 3A, must have received an annual IFQ permit authorizing harvest of IFQ in the commercial fishery in IFQ permit the Commission regulatory area corresponding to the person's QS holding, and must have an IFQ permit account with an IFQ amount equal to or greater than amount of IFQ to be transferred;

(*ii*) The transfer between IFQ and GAF must not cause the GAF permit issued to the GAF permit holder to exceed the GAF use limits in paragraphs (c)(6)(iv)(F)(*1*) and (*2*) of this section;

(*iii*) The transfer must not cause the person applying to transfer IFQ to exceed the GAF use limit in paragraph (c)(6)(iv)(F)(*3*) of this section; and

(*iv*) There must be no fines, civil penalties, sanctions, or other payments due and owing, or outstanding permit sanctions, resulting from Federal fishery violations involving either person or permit.

(*6*) For a transfer of GAF to IFQ, unharvested GAF will be transferred to the IFQ permit account from which it derived.

(*7*) If a Community Quota Entity (CQE), as defined in § 679.2 of this title, is applying for a transfer between IFQ and GAF, the Application for Transfer Between IFQ and GAF by a CQE will not be approved until the Regional Administrator has determined that:

(*i*) The CQE applying to transfer IFQ to GAF is eligible to hold IFQ on behalf of the eligible community in Area 2C or Area 3A designated in Table 21 to 50 CFR part 679;

(*ii*) The CQE applying to transfer IFQ to GAF has received notification of approval of eligibility to receive IFQ for that community as described in paragraph § 679.41(d)(1) of this title;

(*iii*) The CQE applying to receive GAF from an Area 2C or Area 3A IFQ permit holder holds one or more charter halibut permits or community charter halibut permits for the corresponding area; and

(*iv*) The CQE applying to transfer between IFQ and GAF has submitted a complete annual report(s) as required by § 679.5(l)(8) of this title.

(E) *Transfer due to court order, operation of law, or as part of a security agreement.* NMFS may return GAF to the IFQ permit account from which it derived pursuant to a court order,

operation of law, or a security agreement.

(F) *Conversion between IFQ and GAF*—(*1*) *General.* Conversion between net pounds (whole number, no decimal points) of halibut IFQ and number(s) of GAF (whole number, no decimal points) for Area 2C and Area 3A will use Alaska Department of Fish and Game's estimated average net weight of all halibut harvested by charter vessel anglers in Area 2C or Area 3A during the previous year.

(*2*) *Conversion calculation.* The net pounds of IFQ transferred to or from an IFQ permit holder (holder i) in Area 2C or Area 3A (area a) will be equal to the number(s) of GAF transferred to or from the GAF account of a GAF permit holder (holder g) in the corresponding area (area a), multiplied by the ADF&G estimated average net weight of all halibut harvested by charter vessel anglers for that area (area a) during the previous year. NMFS will round up to the nearest whole number (no decimals) when transferring IFQ to GAF and when transferring GAF to IFQ. Expressed algebraically, the conversion formula is:

$$\text{IFQ net pounds}_{ia} = (\text{GAF}_{ga} \times \text{average net weight}_{a}).$$

(*3*) The total number of net pounds converted from unharvested GAF and transferred to the IFQ permit holder's account from which it derived cannot exceed the total number of net pounds NMFS transferred from the IFQ permit holder's account to the GAF permit holder's account for that area in the current year.

(iii) *Guided Angler Fish (GAF) permit*—(A) *General.* (*1*) A GAF permit authorizes a charter vessel angler to catch and retain GAF in that area, subject to the limits in paragraphs (c)(6)(iv)(A) through (I) of this section, during a charter vessel fishing trip authorized by the charter halibut permit, community charter halibut permit, or military charter halibut permit that is assigned to the GAF permit.

(*2*) A GAF permit authorizes a charter vessel angler to catch and retain GAF in that area from the time of permit issuance until any of the following occurs:

(*i*) The amount of GAF in the GAF permit holder's account is zero;

(*ii*) The permit expires at 11:59 pm on the day prior to the automatic GAF return date. The automatic GAF return date is 15 days prior to the end of the commercial halibut fishing season for that year, Alaska local time;

(*iii*) NMFS replaces the GAF permit with a modified GAF permit following a NMFS-approved transfer; or

(*iv*) The GAF permit is revoked or suspended under 15 CFR part 904.

(*3*) A GAF permit is issued for use in a Commission area (2C or 3A) to the person who holds a valid charter halibut permit, community charter halibut permit, or military charter halibut permit in the corresponding Commission area. Regulations governing issuance, transfer, and use of charter halibut permits are located in § 300.67.

(*4*) A GAF permit is assigned to only one charter halibut permit, community charter halibut permit, or military charter halibut permit held by the GAF permit holder in the corresponding Commission area (2C or 3A).

(*5*) A legible copy of a GAF permit and the assigned charter halibut permit, community charter halibut permit, or military charter halibut permit appropriate for the Commission area (2C or 3A) must be carried on board the vessel used to harvest GAF at all times that such fish are retained on board and must be presented for inspection on request of any authorized officer.

(*6*) No person may alter, erase, mutilate, or forge a GAF permit or document issued under this section (§ 300.65(c)(6)(iii)). Any such permit or document that has been intentionally altered, erased, mutilated, or forged is invalid.

(*7*) GAF permit holders must allow an employee of the Alaska Department of Fish and Game or the Commission to enter any area of custody (*i.e.,* any vessel, building, vehicle, live car, pound, pier, or dock facility where fish might be found) subject to such person's control, for the purpose of scientific data collection.

(B) *Issuance.* The Regional Administrator will issue GAF permits upon approval of an Application to Transfer Between IFQ and GAF.

(C) *Transfer.* GAF authorized by a GAF permit under this section (§ 300.65(c)(6)(iii)) are not transferable to another GAF permit, except as provided under paragraph (c)(6)(ii) of this section.

(iv) *GAF use restrictions*—(A) A charter vessel angler may harvest GAF only on board a vessel on which the operator has on board a valid GAF permit and the valid charter halibut permit, community charter halibut permit, or military charter halibut permit assigned to the GAF permit for the area of harvest.

(B) The total number of GAF on board a vessel cannot exceed the number of unharvested GAF in the GAF permit holder's GAF account at the time of harvest.

(C) The total number of halibut retained by a charter vessel angler harvesting GAF cannot exceed the sport fishing daily bag limit in effect for unguided sport anglers at the time of harvest as promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62.

(D) Retained GAF are not subject to the maximum length limit implemented by the CSP restriction implemented pursuant to paragraph (c)(5)(iii) of this section, if applicable.

(E) Each charter vessel angler retaining GAF must comply with the halibut possession requirements as promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62.

(F) Except as provided in paragraph (c)(6)(iv)(I) of this section, during the halibut sport fishing season promulgated by the Commission's annual management measures and published in the **Federal Register** as required in § 300.62, no more than:

(*1*) 400 GAF may be assigned to a GAF permit that is assigned to a charter halibut permit or community charter halibut permit endorsed for six (6) or fewer charter vessel anglers,

(*2*) 600 GAF may be assigned to a GAF permit issued that is assigned to a charter halibut permit endorsed for more than six (6) charter vessel anglers; and

(*3*) 1,500 pounds or ten (10) percent, whichever is greater, of the start year fishable IFQ pounds for an IFQ permit, may be transferred from IFQ to GAF. Start year fishable pounds is the sum of IFQ equivalent pounds, as defined in § 679.2 of this title, for an area, derived from QS held, plus or minus adjustments pursuant to § 679.40(d) and (e) of this title.

(G) For a person who transfers IFQ to GAF, the halibut QS equivalent, issued as net pounds of halibut IFQ and transferred to GAF, is included in the computation of halibut QS and use caps in § 679.42(f)(1)(i) and (ii) of this title.

(H) A person receiving GAF from a CQE is subject to § 679.42(f)(6) of this title. For a person who receives GAF from a CQE, the net poundage equivalent of all halibut IFQ received as GAF is included in the computation of that person's IFQ halibut holdings in § 679.42(f)(6) of this title.

(I) Restrictions on GAF use for CQEs. The GAF use restrictions in paragraph (c)(6)(iv)(F) of this section do not apply if:

(*1*) A CQE transfers IFQ as GAF to a CQE holding one or more charter halibut permits or community charter halibut permits; or

(*2*) A CQE transfers IFQ as GAF to an eligible community resident of that CQE community, as defined for purposes of the Area 2C and Area 3A Catch Sharing Plan in § 679.2 of this title, holding one or more charter halibut permits.

(d) *Charter vessels in Area 2C and Area 3A*—(1) *General requirements*—

(i) *Logbook submission.* For a charter vessel fishing trip during which halibut were caught and retained on or after the first Monday in April and on or before December 31, Alaska Department of Fish and Game (ADF&G) Saltwater Sport Fishing Charter Trip Logbook data sheets must be submitted to the ADF&G and postmarked or received no later than 14 calendar days after the Monday of the fishing week (as defined in 50 CFR 300.61) in which the halibut were caught and retained. Logbook sheets for a charter vessel fishing trip during which halibut were caught and retained on January 1 through the first Sunday in April, must be submitted to the ADF&G and postmarked or received no later than the second Monday in April.

(ii) The charter vessel guide is responsible for complying with the reporting requirements of this paragraph (d). The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook is responsible for ensuring that the charter vessel guide complies with the reporting requirements of this paragraph (d).

(2) *Retention and inspection of logbook.* The person to whom the Alaska Department of Fish and Game issues the Saltwater Sport Fishing Charter Trip Logbook is required to:

(i) Retain the logbook for 2 years after the end of the fishing year for which the logbook was issued, and

(ii) Make the logbook available for inspection upon the request of an authorized officer.

(3) *Charter vessel guide and crew restriction in Area 2C and Area 3A.* A charter vessel guide, charter vessel operator, or crew member in Area 2C or in Area 3A on a vessel with charter vessel anglers on board that are catching and retaining halibut must not catch and retain halibut during a charter vessel fishing trip.

(4) *Recordkeeping and reporting requirements in Area 2C and Area 3A*—(i) *General requirements.* Each charter vessel angler and charter vessel guide on board a vessel in Area 2C or in Area 3A must comply with the following recordkeeping and reporting requirements (see paragraphs (d)(4)(i) and (ii) of this section), except as specified in paragraph (d)(4)(ii)(C), by the end of the day or by the end of the charter vessel fishing trip, whichever comes first:

(ii) *Logbook reporting requirements*—(A) *Charter vessel angler signature requirement.* Each charter vessel angler who retains halibut caught in Area 2C or in Area 3A must acknowledge that his or her information and the number of halibut retained (kept) are recorded correctly by signing the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook data sheet on the line that corresponds to the angler's information.

(B) *Charter vessel guide requirements.* If halibut were caught and retained in Area 2C or in Area 3A, the charter vessel guide must record the following information (see paragraphs (d)(4)(ii)(B)(*1*) through (*10*) of this section) in the Alaska Department of Fish and Game Saltwater Sport Fishing Charter Trip Logbook:

(*1*) *Guide license number.* The Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(*2*) *Date.* Month and day for each charter vessel fishing trip taken. A separate logbook data sheet is required for each charter vessel fishing trip if two or more trips were taken on the same day. A separate logbook data sheet is required for each calendar day that halibut are caught and retained during a multi-day trip.

(*3*) *Charter halibut permit (CHP) number.* The NMFS CHP number(s) authorizing charter vessel anglers on board the vessel to catch and retain halibut.

(*4*) *Guided Angler Fish (GAF) permit number.* The NMFS GAF permit number(s) authorizing charter vessel anglers on board the vessel to harvest GAF.

(*5*) *Statistical area.* The primary Alaska Department of Fish and Game six-digit statistical area code in which halibut were caught and retained.

(*6*) *Angler sport fishing license number and printed name.* Before a charter vessel fishing trip begins, record for each charter vessel angler the Alaska Sport Fishing License number for the current year, resident permanent license number, or disabled veteran license number, and print the name of each paying and nonpaying charter vessel angler on board that will fish for halibut. Record the name of each angler not required to have an Alaska Sport Fishing License or its equivalent.

(*7*) *Number of halibut retained.* For each charter vessel angler, record the total number of halibut caught and retained.

(*8*) *Number of GAF retained.* For each charter vessel angler, record the total number of GAF retained.

(*9*) *Signature.* Acknowledge that the recorded information is correct by signing the logbook data sheet.

(*10*) *Angler signature.* The charter vessel guide is responsible for ensuring that charter vessel anglers comply with the signature requirements at paragraph (d)(4)(ii)(A) of this section.

(C) *GAF electronic reporting confirmation number.* The GAF permit holder is responsible for ensuring that by 2359 hours on the day GAF were retained, the confirmation number issued for a properly reported GAF landings report, as described in paragraph (d)(4)(iii) of this section, is entered on the logbook sheet on which those GAF were recorded.

(iii) *GAF reporting requirements*—(A) *General*—(*1*) In addition to the recordkeeping and reporting requirements in paragraphs (d)(4)(i) and (ii) of this section, a GAF permit holder must use the NMFS-approved electronic reporting system on the Alaska Region Web site at *http://alaskafisheries.noaa.gov/* to submit a GAF landings report.

(*2*) A GAF permit holder must submit a GAF landings report by 2359 hours for each day on which a charter vessel angler retained GAF authorized by the GAF permit held by that permit holder.

(*3*) If a GAF permit holder is unable to submit a GAF landings report due to hardware, software, or Internet failure for a period longer than the required reporting time, or a correction must be made to information already submitted, the GAF permit holder must contact OLE, Juneau, AK, at 800–304–4846 (Select Option 1).

(B) *Electronic Reporting of GAF.* A GAF permit holder must obtain, at his or her own expense, the technology that they will use for submitting GAF landing reports to the NMFS-approved reporting system for GAF landings.

(C) *NMFS-Approved Electronic Reporting System.* The GAF permit holder agrees to the following terms (see paragraphs (d)(4)(iii)(C)(*1*) through (*3*) of this section):

(*1*) To use any NMFS online service or reporting system only for authorized purposes;

(*2*) To safeguard the NMFS Person Identification Number and password to prevent their use by unauthorized persons; and

(*3*) To accept the responsibility of and acknowledge compliance with § 300.4(a) and (b), § 300.65(d), and § 300.66(p) and (q).

(D) *Information entered for each GAF caught and retained.* The GAF permit

holder must enter the following information for each GAF retained under the authorization of the permit holder's GAF permit into the NMFS-approved electronic reporting system (see paragraphs (d)(4)(iii)(D)(*1*) through (*7*) of this section) for each day on which a charter vessel angler retained GAF:

(*1*) Logbook number from the Alaska Department of Fish and Game Saltwater Charter Logbook.

(*2*) Vessel identification number for vessel on which GAF were caught and retained:

(*i*) State of Alaska issued boat registration (AK number), or

(*ii*) U.S. Coast Guard documentation number.

(*3*) GAF permit number under which GAF were caught and retained.

(*4*) Alaska Department of Fish and Game sport fishing guide license number held by the charter vessel guide who certified the logbook data sheet.

(*5*) Number of GAF caught and retained under the GAF permit holder's permit number.

(*6*) Community charter halibut permit only: Community or Port where charter vessel fishing trip began (charter vessel anglers boarded the vessel).

(*7*) Community charter halibut permit only: Community or Port where charter vessel fishing trip ended (charter vessel anglers or fish were offloaded from the vessel).

(E) *Properly reported landing*—(*1*) All GAF harvested on board a vessel must be debited from the GAF permit holder's account under which the GAF were retained.

(*2*) A GAF landing confirmation number issued by the NMFS-approved electronic reporting system and recorded on the logbook sheet used to record the retained GAF, as required in paragraph (d)(4)(ii)(C) of this section, constitutes confirmation that the GAF permit holder's GAF landing is properly reported and the GAF permit holder's account is properly debited.

* * * * *

4. In § 300.66:

a. Redesignate paragraphs (i) through (v) as paragraphs (j) through (w), respectively;

b. Revise paragraph (h) introductory text and newly redesignated paragraphs (s), (t), (u), and (v); and

c. Add paragraphs (i), (x), (y), and (z) to read as follows:

§ 300.66 Prohibitions.

* * * * *

(h) Conduct subsistence fishing for halibut while commercial fishing or sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day, except that persons authorized to conduct subsistence fishing under § 300.65(g), and who land their total annual harvest of halibut:

* * * * *

(i) Conduct commercial and sport fishing for halibut, as defined in § 300.61, from the same vessel on the same calendar day.

* * * * *

(s) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are catching and retaining halibut without an original valid charter halibut permit for the regulatory area in which the vessel is operating.

(t) Be an operator of a vessel in Area 2C or Area 3A with more charter vessel anglers on board catching and retaining halibut than the total angler endorsement number specified on the charter halibut permit or permits on board the vessel.

(u) Be an operator of a vessel in Area 2C or Area 3A with more charter vessel anglers on board catching and retaining halibut than the angler endorsement number specified on the community charter halibut permit or permits on board the vessel.

(v) Be an operator of a vessel on which one or more charter vessel anglers on board are catching and retaining halibut in Area 2C and Area 3A during one charter vessel fishing trip.

* * * * *

(x) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that are exceeding the daily bag limits specified in § 300.65(c)(5).

(y) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that possess halibut that has been mutilated or otherwise disfigured in a manner that prevents the determination of size or number of fish, except that each halibut may be cut into no more than two ventral pieces, two dorsal pieces, and two cheek pieces, with skin on all pieces.

(z) Be an operator of a vessel in Area 2C or Area 3A with one or more charter vessel anglers on board that possess halibut that are required to have a head-on length of no more than the maximum length specified under § 300.65(c)(5) and are cut into more than one piece without possessing the entire carcass, with the head and tail connected as a single piece.

5. In § 300.67:

a. Redesignate paragraphs (i)(2)(v) and (i)(2)(vi) as paragraphs (i)(2)(vi) and (i)(2)(vii), respectively; and

b. Add paragraph (i)(2)(v) to read as follows:

§ 300.67 Charter halibut limited access program.

* * * * *

(i) * * *

(2) * * *

(v) The charter halibut permit is not assigned to a GAF permit for which the GAF account contains unharvested GAF, pursuant to § 300.65 (c)(6)(iii)(A)(*3*) and (*4*);

* * * * *

6. Add Tables 1 through 8 to subpart E of Part 300 to read as follows:

TABLE 1 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C ANNUAL COMMERCIAL CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 2C annual commercial catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs	4,999,999 lbs	82.7%
5,000,000 lbs and greater		84.9%

TABLE 2 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A ANNUAL COMMERCIAL CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 3A annual commercial catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs	9,999,999 lbs	84.6%
10,000,000 lbs and greater		86.0%

TABLE 3 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C ANNUAL GUIDED SPORT CATCH LIMIT

If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 2C annual guided sport catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs	4,999,999 lbs	17.3%
5,000,000 lbs and greater		15.1%

TABLE 4 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A ANNUAL GUIDED SPORT CATCH LIMIT

If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is:	and . . .	then the Area 3A annual guided sport catch limit in net pounds is equal to the annual combined catch limit multiplied by:
between 0 lbs	9,999,999 lbs	15.4%
10,000,000 lbs and greater		14.0%

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS

(Column 1) If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 4) Under the default CSP restriction (table 5, column 3), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 5) and:	(Column 6) If the projected harvest by charter vessel anglers using the default CSP restriction (table 5, column 3) is:	(Column 7) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
0 lbs	4,999,999 lbs	one halibut of any size.	13.8%	20.8%	less than 13.8% of the annual combined catch limit.	limited to no more than one halibut of any size.
					greater than or equal to 13.8% and less than or equal to 20.8% of the annual combined catch limit.	limited to no more than one halibut of any size.

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

					greater than 20.8% of the annual combined catch limit.	limited to no more than one halibut with a head-on length of no more than L_{in} as determined in § 300.65(c)(5)(iii)(C).
5,000,000 lbs ...	8,999,999 lbs	one halibut of any size.	11.6%	18.6%	less than 11.6% of the annual combined catch limit.	determined in Table 7 of this subpart E.
					greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	limited to no more than one halibut of any size.
					greater than 18.6% of the annual combined catch limit.	limited to no more than one halibut with a head-on length of no more than L_{in} as determined in § 300.65(c)(5)(iii)(C).
9,000,000 lbs ...	13,999,999 lbs	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	11.6%	18.6%	less than 11.6% of the annual combined catch limit.	determined in Table 7 of this subpart E.
					greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	limited to no more than two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
					greater than 18.6% of the annual combined catch limit.	limited to no more than one halibut of any size.
14,000,000 lbs and greater		two halibut of any size.	11.6%	18.6%	less than 11.6% of the annual combined catch limit.	limited to no more than two halibut of any size.

TABLE 5 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

					greater than or equal to 11.6% and less than or equal to 18.6% of the annual combined catch limit.	limited to no more than two halibut of any size.
					greater than 18.6% of the annual combined catch limit.	limited to no more than two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

TABLE 6 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS

(Column 1) If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) then the default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 4) Under the default CSP restriction (table 6, column 3), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 5) and:	(Column 6) If the projected harvest by charter vessel anglers using the default CSP restriction (table 6, column 3) is:	(Column 7) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
0 lbs	9,999,999 lbs	one halibut of any size.	11.9%	18.9%	less than 11.9% of the annual combined catch limit.	limited to no more than one halibut of any size.
					greater than or equal to 11.9% and less than or equal to 18.9% of the annual combined catch limit.	limited to no more than one halibut of any size.
					greater than 18.9% of the annual combined catch limit.	limited to no more than one halibut with a head-on length of no more than L_{in} as determined in § 300.65(c)(5)(iii)(C).
10,000,000 lbs	19,999,999 lbs	one halibut of any size.	10.5%	17.5%	less than 10.5% of the annual combined catch limit.	determined in Table 8 of this subpart E.
					greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	limited to no more than one halibut of any size.
					greater than 17.5%	limited to no more than one halibut with a head-on length of no more than L_{in} as determined in § 300.65(c)(5)(iii)(C).

TABLE 6 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS—Continued

20,000,000 lbs	26,999,999 lbs	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	10.5%	17.5%	less than 10.5% of the annual combined catch limit.	determined in Table 8 of this subpart E.
					greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	limited to no more than two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
					greater than 17.5% of the annual combined catch limit.	limited to no more than one halibut of any size.
27,000,000 lbs and greater		two halibut of any size.	10.5%	17.5%.	less than 10.5% of the annual combined catch limit.	limited to no more than two halibut of any size.
					greater than or equal to 10.5% and less than or equal to 17.5% of the annual combined catch limit.	limited to no more than two halibut of any size.
					greater than 17.5% of the annual combined catch limit.	limited to no more than two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

TABLE 7 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED

(Column 1) If the Area 2C annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) and the projected harvest by charter vessel anglers using the default CSP restriction (table 5, column 3) is:	(Column 4) then the second default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 5) Under the second default CSP restriction (table 7, column 4), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 6) and:	(Column 7) If the projected harvest by charter vessel anglers using the second default CSP restriction (table 7, column 4) is:	(Column 8) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:

TABLE 7 TO SUBPART E OF PART 300—DETERMINATION OF AREA 2C CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED—Continued

5,000,000 lbs	8,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	11.6%	18.6%	less than or equal to 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.
						greater than 18.6% of the annual combined catch limit.	one halibut of any size.
9,000,000 lbs	13,999,999 lbs	less than 11.6% of the annual combined catch limit.	two halibut of any size.	11.6%	18.6%	less than or equal to 18.6% of the annual combined catch limit.	two halibut of any size.
						greater than 18.6% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

TABLE 8 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED

(Column 1) If the Area 3A annual combined catch limit for halibut in net pounds (lbs) is between:	(Column 2) and:	(Column 3) and the projected harvest by charter vessel anglers using the default CSP restriction (table 6, column 4) is:	(Column 4) then the second default CSP restriction is that the number of halibut caught and retained per calendar day by each charter vessel angler is limited to no more than:	(Column 5) Under the second default CSP restriction (table 8, column 4), the projected harvest by charter vessel anglers as a percentage of the annual combined catch limit is intended to be between:	(Column 6) and:	(Column 7) If the projected harvest by charter vessel anglers using the second default CSP restriction (table 8, column 4) is:	(Column 8) then the annual CSP restriction in effect is that the number of halibut caught and retained per calendar day by each charter vessel angler is:
10,000,000 lbs ..	19,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.	10.5%	17.5%	less than or equal to 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

TABLE 8 TO SUBPART E OF PART 300—DETERMINATION OF AREA 3A CHARTER VESSEL ANGLER CSP RESTRICTIONS IF A SECOND PROJECTION IS NEEDED—Continued

						greater than 17.5% of the annual combined catch limit.	one halibut of any size.
20,000,000 lbs ..	26,999,999 lbs	less than 10.5% of the annual combined catch limit.	two halibut of any size.	10.5%	17.5%	less than or equal to 17.5% of the annual combined catch limit.	two halibut of any size.
						greater than 17.5% of the annual combined catch limit.	two halibut, but at least one halibut must have a head-on length of no more than 32 inches (81.3 cm). If a charter vessel angler retains only one halibut in a calendar day, that halibut may be of any length.

50 CFR Chapter VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

7. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

8. In § 679.2, revise the definitions of ''Eligible community resident'', ''IFQ equivalent pound(s)'', ''IFQ fee liability'', and ''IFQ standard ex-vessel value'' to read as follows:

§ 679.2 Definitions.

* * * * *

Eligible community resident means:

(1) For purposes of the IFQ Program, any individual who:

(i) Is a citizen of the United States;

(ii) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and

(iii) Is an IFQ crew member.

(2) For purposes of the Area 2C and Area 3A catch sharing plan (CSP) in § 300.65(c) of this title, means any individual or non-individual entity who:

(i) Holds a charter halibut permit as defined in § 300.61 of this title;

(ii) Has been approved by the Regional Administrator to receive GAF, as defined in § 300.61 of this title, from a CQE in a transfer between IFQ and GAF pursuant to § 300.65(c)(6)(ii) of this title; and

(iii) Begins or ends every charter vessel fishing trip, as defined in § 300.61 of this title, authorized by the charter halibut permit issued to that person, and on which halibut are retained, at a location(s) within the boundaries of the community represented by the CQE from which the GAF were received. The geographic boundaries of the eligible community will be those defined by the United States Census Bureau.

* * * * *

IFQ equivalent pound(s) means the weight amount, recorded in pounds and calculated as round weight for sablefish and headed and gutted weight for halibut for an IFQ landing or for estimation of the fee liability of halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title. Landed GAF are converted to IFQ equivalent pounds as specified in § 300.65(c) of this title.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or, for non-GAF landings, the actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s), by the appropriate IFQ fee percentage and the appropriate standard ex-vessel value of landed GAF derived from his or her IFQ by the appropriate IFQ fee percentage.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds plus landed GAF in IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

* * * * *

9. In § 679.4:

a. Add paragraph (a)(1)(xv); and

b. Revise paragraph (a)(2) to read as follows:

§ 679.4 Permits.

(a) * * *

(1) * * *

If program permit or card type is:	Permit is in effect from issue date through the end of:	For more information, see . . .
* * * * * * *		
(xv) Permits for guided sport halibut fishery:		
(A) Charter halibut permit	Indefinite	§ 300.67 of this title.
(B) Community charter halibut permit	Indefinite	§ 300.67 of this title.
(C) Military charter halibut permit	Indefinite	§ 300.67 of this title.
(D) Guided Angler Fish (GAF) permit	Until expiration date shown on permit	§ 300.65 of this title.

(2) *Permit and logbook required by participant and fishery.* For the various types of permits issued, refer to § 679.5 for recordkeeping and reporting requirements. For subsistence and GAF permits, refer to § 300.65 of this title for recordkeeping and reporting requirements.

* * * * *

10. In § 679.5, revise paragraph (l)(7) to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(7) *IFQ cost recovery program*—(i) *IFQ Registered Buyer Ex-vessel Value and Volume Report*—(A) *Requirement.* An IFQ Registered Buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Registered Buyer Ex-vessel Value and Volume Report as described in this paragraph (l) and as provided by NMFS for each reporting period, as described at paragraph (1)(7)(i)(E), in which the Registered Buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Registered Buyer Ex-vessel Value and Volume Report must be postmarked or received by the Regional Administrator by October 15 following the reporting period in which the IFQ Registered Buyer receives the IFQ fish.

(C) *Completed application.* NMFS will process a Registered Buyer Ex-vessel Value and Volume Report provided that a paper or electronic report is completed by the Registered Buyer, with all applicable fields accurately filled in, and all required additional documentation is attached.

(*1*) *Certification, Electronic submittal.* NMFS ID and password of the IFQ Registered Buyer; or

(*2*) *Certification, Non-electronic submittal.* Printed name and signature of the individual submitting the Registered Buyer Ex-vessel Value and Volume Report on behalf of the Registered Buyer, and date of signature.

(D) *Submission address.* The Registered Buyer must complete a Registered Buyer Ex-vessel Value and Volume Report and submit by mail to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668; by FAX to: (907) 586–7354; or electronically at *http://alaskafisheries.noaa.gov.* Report forms are available on the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov,* or by contacting NMFS at 800–304–4846, Option 2.

(E) *Reporting period.* The reporting period of the Registered Buyer Ex-vessel Value and Volume Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Completed application.* NMFS will process an IFQ Fee Submission Form provided that a paper or electronic form is completed by the permit holder, with all applicable fields accurately filled in, and all required additional documentation is attached.

(D) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(2)(i) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(E) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(F) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(G) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date.

* * * * *

11. In § 679.40, revise the introductory text and paragraph (c)(1) to read as follows:

§ 679.40 Sablefish and halibut QS.

The Regional Administrator shall annually divide the annual commercial fishing catch limit of halibut as defined in § 300.61 of this title and published in the **Federal Register** pursuant to § 300.62 of this title, among qualified halibut quota share holders. The Regional Administrator shall annually divide the TAC of sablefish that is apportioned to the fixed gear fishery pursuant to § 679.20, minus the CDQ reserve, among qualified sablefish quota share holders.

* * * * *

(c) *Calculation of annual IFQ allocation*—(1) *General*—(i) The annual allocation of halibut IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the annual commercial catch limit as defined in § 300.61 of this title, after adjustment for purposes of the Western Alaska CDQ Program, and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the

annual halibut IFQ allocation formula is as follows:

IFQ_{pa} = [(annual commercial catch limit$_a$) × (QS_{pa}/QS pool$_a$)] − overage adjustment of IFQ_{pa} + underage adjustment of IFQ_{pa}.

(ii) The annual allocation of sablefish IFQ to any person (person p) in any IFQ regulatory area (area a) will be equal to the product of the TAC of sablefish by fixed gear for that area (after adjustment for purposes of the Western Alaska CDQ Program) and that person's QS divided by the QS pool for that area. Overage adjustments will be subtracted from a person's IFQ pursuant to paragraph (d) of this section; underage adjustments will be added to a person's IFQ pursuant to paragraph (e) of this section. Expressed algebraically, the annual IFQ allocation formula is as follows:

IFQ_{pa} = [(fixed gear TAC_a − CDQ reserve$_a$) × (QS_{pa}/QS pool$_a$)] − overage adjustment of IFQ_{pa} + underage adjustment of IFQ_{pa}.

* * * * *

12. In § 679.41, add paragraph (a)(3) to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

(a) * * *

(3) A transfer between IFQ and guided angler fish (GAF), as defined in § 300.61 of this title, is governed by regulations in § 300.65(c) of this title.

* * * * *

13. In § 679.42 revise paragraphs (f)(1)(i), (f)(1)(ii), and (f)(6) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(f) * * *

(1) * * *

(i) *IFQ regulatory Area 2C.* 599,799 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS, including halibut QS issued as IFQ and transferred to GAF, as defined in § 300.61 of this title.

* * * * *

(6) No individual that receives IFQ derived from halibut QS held by a CQE, including GAF as defined in § 300.61 of this title, may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut, including IFQ halibut received as GAF, derived from any halibut QS source.

* * * * *

14. In § 679.45:

a. Remove and reserve paragraph (c); and

b. Revise paragraphs (a)(1), (a)(2), (a)(3), (a)(4)(i), (a)(4)(ii), (a)(4)(iii), (b), (d)(2) heading, (d)(2)(i)(A), (d)(2)(i)(B), (d)(2)(i)(C), (d)(2)(ii), (d)(3)(i), (d)(4), (e), and (f) to read as follows:

§ 679.45 IFQ cost recovery program.

(a) * * *

(1) *Responsibility.* An IFQ permit holder is responsible for cost recovery fees for landings of his or her IFQ halibut and sablefish, including any halibut landed as guided angler fish (GAF), as defined in § 300.61 of this title, derived from his or her IFQ accounts. An IFQ permit holder must comply with the requirements of this section.

(2) *IFQ Fee Liability Determination*—(i) *General.* IFQ fee liability means a cost recovery liability based on the value of all landed IFQ and GAF derived from his or her IFQ permit(s).

(A) Each year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ equivalent pounds landed as IFQ and GAF as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(*2*).

(B) The summary will include information on IFQ and GAF landings and an estimated IFQ fee liability using the IFQ standard ex-vessel value for IFQ and GAF landings. For fee purposes:

(*1*) Landings of GAF in IPHC Regulatory Area 2C or Area 3A are converted to IFQ equivalent pounds and assessed at the Area 2C or Area 3A IFQ standard ex-vessel value.

(*2*) GAF that is returned to the IFQ permit holder's account pursuant to § 300.65(c) of this title, and subsequently landed as IFQ during the IFQ fishing year, is included in the IFQ fee liability and subject to fee assessment as IFQ equivalent pounds.

(C) The IFQ permit holder must either accept NMFS' estimate of the IFQ fee liability or revise NMFS' estimate of the IFQ fee liability using the Fee Submission Form described at § 679.5(l)(7)(ii), except that the standard ex-vessel value used to determine the fee liability for GAF is not subject to challenge. If the IFQ permit holder revises NMFS' estimate of his or her IFQ fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the IFQ permit holder fails to provide adequate documentation on or by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's IFQ fee liability based on standard ex-vessel values.

(ii) *Value assigned to GAF.* The IFQ fee liability is computed from all net pounds allocated to the IFQ permit holder that are landed, including IFQ landed as GAF.

(A) NMFS will determine the IFQ equivalent pounds of GAF landed in Area 2C or Area 3A that are derived from the IFQ permit holder's account.

(B) The IFQ equivalent pounds of GAF landed in Area 2C or Area 3A are multiplied by the standard ex-vessel value computed for that area to determine the value of IFQ landed as GAF.

(iii) The value of IFQ landed as GAF is added to the value of the IFQ permit holder's landed IFQ, and the sum is multiplied by the annual IFQ fee percentage to estimate the IFQ permit holder's IFQ fee liability.

(3) *Fee Collection.* An IFQ permit holder with IFQ and/or GAF landings is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish and/or GAF is landed.

(4) * * *

(i) *Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ and/or GAF landings were made.

(ii) *Payment recipient.* Make payment payable to IFQ Fee Coordinator, OMI.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: IFQ Fee Coordinator, Office of Operations, Management and Information (OMI), P.O. Box 21668, Juneau, AK 99802 1668; submit by fax to (907) 586–7354; or submit electronically through the NMFS Alaska Region Home Page at *http://www.alaskafisheries.noaa.gov.* If paying by credit card, ensure that all requested card information is provided.

* * * * *

(b) *IFQ ex-vessel value determination and use*—(1) *General.* An IFQ permit holder must use either the IFQ actual ex-vessel value or the IFQ standard ex-vessel value when determining the IFQ fee liability based on ex-vessel value, except that landed GAF are assessed at the standard values derived by NMFS. An IFQ permit holder must base all IFQ fee liability calculations on the ex-vessel value that correlates to the landed IFQ in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability for landed IFQ must document actual ex-vessel value for each IFQ permit. The actual ex-vessel value cannot be used to assign value to halibut landed as GAF.

(3) *IFQ standard ex-vessel value*—(i) *Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability, as part of a revised IFQ fee liability submission, must use the corresponding standard price(s) as published in the **Federal Register**.

(ii) All landed GAF must be valued using the standard ex-vessel value for the year and for the management area of harvest—Area 2C or Area 3A.

(iii) *Duty to publish list.* Each year the Regional Administrator will publish a list of IFQ standard prices in the **Federal Register** during the last quarter of the calendar year. The IFQ standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(iv) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(v) *Determination.* NMFS will apply the standard price, aggregated to management Area 2C or Area 3A, to GAF landings. NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Registered Buyer Ex-Vessel Value and Volume Report as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed net pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(c) [Reserved]

(d) * * *

(2) *Calculating the fee percentage.* * * *

(i) * * *

(A) The IFQ and GAF landings to which the IFQ fee will apply;

(B) The ex-vessel value of that landed IFQ and GAF; and

(C) The costs directly related to the management and enforcement of the IFQ program, which include GAF costs.

(ii) *Methodology.* NMFS must use the following equation to determine the fee percentage:

$$100 \times (DPC/V)$$

where:

''DPC'' is the direct program costs for the IFQ fishery for the previous fiscal year, and

''V'' is the ex-vessel value determined for IFQ landed as commercial catch or as GAF subject to the IFQ fee liability for the current year.

(3) * * *

(i) *General.* During or before the last quarter of each calendar year, NMFS shall publish the IFQ fee percentage in the **Federal Register**. NMFS shall base any IFQ fee liability calculations on the factors and methodology in paragraph (d)(2) of this section.

* * * * *

(4) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect for the year in which the IFQ and GAF landings are made to calculate his or her fee liability for such landed IFQ and GAF. The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* (1) If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(4), the Regional Administrator will:

(i) *Send IAD.* Send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2), is the amount of IFQ fee liability due from the IFQ permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(ii) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit account from which it was derived on or after the automatic GAF return date.

(2) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, as described in paragraph (f) of this section, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(3) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the IFQ Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator will:

(i) *Disapprove transfer.* Disapprove any transfer of GAF, IFQ, or QS to or from the IFQ permit holder in accordance with § 300.65(c) of this title and § 679.41(c), until the IFQ fee liability is reconciled, except that NMFS may return unused GAF to the IFQ permit account from which it was derived on or after the automatic GAF return date.

(ii) *Notify permit holder.* Notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount.

(2) After the expiration of the 30-day period, the Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal the IAD, as described in paragraph (h) of this section.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action.

(4) If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action.

(5) Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid.

(6) If payment is not received on or before the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

* * * * *

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Part IV

Department of Agriculture

Federal Crop Insurance Corporation

7 CFR Part 407

Area Risk Protection Insurance Regulations and Area Risk Protection Insurance Crop Provisions; Proposed Rule

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 407

[Docket No. FCIC–11–0002]

RIN 0563–AC25

Area Risk Protection Insurance Regulations and Area Risk Protection Insurance Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to replace the Group Risk Plan (GRP) provisions in CFR part 407, which includes the: GRP Basic Provisions, GRP Barley Crop Provisions, GRP Corn Crop Provisions, GRP Cotton Crop Provisions, GRP Forage Crop Provisions, GRP Peanut Crop Provisions, GRP Sorghum Crop Provisions, GRP Soybean Crop Provisions, and GRP Wheat Crop Provisions, with a new Area Risk Protection Insurance (ARPI) Basic Provisions and ARPI Crop Provisions for each of these crops except Barley and Peanuts. The new ARPI provisions will also replace the Group Risk Income Protection (GRIP) Basic Provisions, the GRIP Crop Provisions, and the GRIP-Harvest Revenue Option (GRIP–HRO). ARPI will offer producers a choice of Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection, all within one Basic Provision and the applicable Crop Provisions. This will reduce the amount of information producers must read to determine the best risk management tool for their operation and will improve the provisions to better meet the needs of insured's. The changes will apply for the 2013 and succeeding crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 20, 2011 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before September 20, 2011.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC–11–0002, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *By Mail to:* Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133–6205.

All comments received, including those received by mail, will be posted without change to *http://www.regulations.gov*, including any personal information provided, and can be accessed by the public. All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see *http://www.regulations.gov*. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submission. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823–4694 or by e-mail at *rmaweb.content@rma.usda.gov*.

Privacy Act: Anyone is able to search the electronic form of all comments received for any 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 the complete User Notice and Privacy Notice for Regulations.gov at *http://www.regulations.gov/#!privacyNotice*.

FOR FURTHER INFORMATION CONTACT: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141–6205, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

Executive Orders 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). 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 designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

Benefit-Cost Analysis

A Benefit-Cost Analysis has been completed and a summary is shown below; the full analysis may be viewed on *http://www.regulations.gov* (see **ADDRESSES** above for instructions for accessing *http://www.regulations.gov*). In summary, the analysis finds that changes in the rule will have an expected savings of $705,722 to the government in administration of the Federal Crop Insurance program; a cost of slightly over $488,255 to producers; and a cost of slightly over $1 million to insurance providers.

Combining area yield protection (protection for production losses only) and area revenue protection (protection against loss of revenue caused by low prices, low yields or a combination of both) within one Basic Provisions and the applicable Crop Provisions will minimize the quantity of documents needed to describe the contract between the insured and the insurance provider. An insured benefits because he or she will not receive several copies of largely duplicative material as part of the insurance contracts for crops insured under different plans of insurance. Insurance providers benefit because there is no need to maintain inventories of similar materials. Handling, storing and mailing costs are reduced to the extent that duplication of Basic or Crop Provisions is eliminated. Benefits accrue due to avoided costs (resources employed for duplicative effort), which are intangible in nature. These proposed changes will increase the efficiency of the insurance provider by eliminating the need to maintain and track separate forms, and by eliminating the potential for providing an incorrect set of documents to an insured by inadvertent error.

The GRIP plan of insurance currently uses a market-price discovery method to determine prices. This rule proposes to use this same method for determining prices for both area revenue protection and area yield protection. The benefits of this action primarily accrue to FCIC, which will no longer be required to make two estimates of the respective market price for these crops. Insurance providers benefit because they no longer will be required to process two releases of the expected market price for a crop year. Insureds also benefit because the price at which they may insure the crops included under GRP yield protection should more closely approximate the market value of any

loss in yield that is subject to an indemnity, and insured's will not have to analyze potential differences in price in deciding between area revenue or area yield protection. There are essentially no direct costs for this change since the market-price price discovery mechanism already exists and is in use for GRIP plan of insurance. All required data is available and similar calculations are currently being made.

Peanuts and barley currently are insured under the GRP plan of insurance, but have had no actuarial offers since 2009 and 1997, respectively. Thus, no Crop Provisions will be included for these crops.

These changes will simplify administration of the crop insurance program, reduce the quantity of documents and electronic materials prepared and distributed, better define the terms of coverage, provide greater clarity, and reduce the potential for waste, fraud, and abuse.

Many of the benefits and costs associated with the proposed rule cannot be quantified. The qualitative assessment indicates that the benefits outweigh the costs of the regulation.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in this rule have been submitted for approval to OMB. Please submit written comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Electronic comments can be submitted to *http://www.regulations.gov.* A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

Comments are being solicited from the public concerning this proposed information collection and record keeping requirements. This outside input will help:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption 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 (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission responses.)

Title: Area Risk Protection Insurance.

Abstract: To administer the Area Risk Protection Insurance (ARPI) Basic Provisions and affected Crop Provisions to determine insurance coverage, premiums, subsidies, payments and indemnities.

Purpose: FCIC proposes to replace the GRP Insurance Regulations, Basic Provisions, GRP Barley Crop Provisions, GRP Corn Crop Provisions, GRP Cotton Crop Provisions, GRP Forage Crop Provisions, GRP Peanut Crop Provisions, GRP Sorghum Crop Provisions, GRP Soybean Crop Provisions, and GRP Wheat Crop Provisions with a new ARPI Basic Provisions and ARPI Crop Provisions. The new provisions will also replace the GRIP Basic Provisions and GRIP Crop Provisions and the GRIP—Harvest Revenue Option (GRIP—HRO). The intended effect of this action is to offer producers a choice of area revenue protection, area revenue protection with the harvest price exclusion, or area yield protection all within one Basic Provision and applicable Crop Provisions. This will reduce the amount of information producers must read to determine the best risk management tool for their operation and will improve the provisions to better meet the needs of insured producers. The burden hours for GRP and GRIP were previously contained in Information Collection Burden Package 0563–0053. FCIC is removing the GRP and GRIP burden hours from 0563–0053 accordingly. FCIC is creating this new package to include the information collection requirements necessary for administering the ARPI policy.

Burden Statement: Producers are required to report specific data when they apply for crop insurance and to report acreage, yields, and notices of loss. Approved Insurance Providers (AIP) accept applications, issue policies, establish and provide insurance coverage, compute liability, premium, subsidies, and losses, indemnify producers, and report specific data to FCIC, as required. Insurance agents market crop insurance and provide crop insurance services to the producer. This data is used to administer the Federal crop insurance program in accordance with the Federal Crop Insurance Act, as amended.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 0.5 of an hour per response. Respondents: Producers and insurance providers reinsured by FCIC.

Estimated Annual Number of Respondents: 34,572.

Estimated Annual Number of Responses per Respondent: 9.9.

Estimated Annual Number of Responses: 341,509.

Estimated Total Annual Burden Hours on Respondents: 176,579.

E-Government Act Compliance

FCIC 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.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and Tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small

entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities and therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR part 400, subpart J for the informal administrative review process of good farming practices as applicable, must be exhausted before any action against FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, or safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

1. Proposed Policy

FCIC proposes to discontinue the GRIP plan of insurance and to replace the GRP crop provisions in CFR part 407 with the Area Risk Protection Insurance (ARPI) Basic Provisions and Crop Provisions for the following crops: (1) Corn, (2) Cotton, (3) Forage, (4) Grain Sorghum, (5) Soybean, and (6) Wheat. The new ARPI product will provide the same types of coverage currently provided in both GRIP and GRP. ARPI will consist of one Basic Provision and one set of Crop Provisions. ARPI will contain three insurance plans: Area Yield Protection, Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion.

Area Yield Protection will provide the same coverage currently provided in the GRP provisions. Area Revenue Protection will provide the same coverage previously provided prior to 2011 under the GRIP provisions with the Harvest Revenue Option type or in 2011 as GRIP Revenue Protection. Area Revenue Protection with the Harvest Price Exclusion will provide the same coverage provided prior to 2011 under the GRIP provisions for the type No Type Specified or in 2011 as GRIP Revenue with the Harvest Price Exclusion.

2. Pricing

ARPI will use a document called the Commodity Exchange Price Provisions (CEPP–ARPI) to show the method used to price each crop. The CEPP–ARPI will be used for all three insurance plans including Area Yield Protection and prices will generally be based on the commodity markets. FCIC proposes that the CEPP–ARPI will be available for public inspection on RMA's Web site at *http://www.rma.usda.gov/,* or a successor Web site, by the contract change date. The CEPP–ARPI will not be published in the Code of Federal Regulations. However, FCIC would like comments on the CEPP–ARPI and, therefore, has included its text below.

COMMODITY EXCHANGE PRICE PROVISIONS—AREA RISK PROTECTION INSURANCE (CEPP–ARPI) 2013 AND SUCCEEDING CROP YEARS

Section I: General Information

The CEPP–ARPI applies only to crops where choices of protection include both area revenue protection and area yield protection.

1. General Definitions

Additional daily settlement price—A price used in the establishment of the average daily settlement price when at least 8 daily settlement prices for the contract specified in the applicable insured crop's projected price or harvest price definition are not available. The prices are generally obtained from the contract immediately prior to the contract specified in the applicable insured crop's projected price or harvest price definition, or another contract as determined by RMA. The price must represent the same crop year as the insured crop. Additional daily settlement prices will be those closest to the dates where daily settlement prices for the contract specified in the applicable insured crop's projected price or harvest price definition, as applicable, do not qualify or are missing. If enough additional daily settlement prices are not available to meet the minimum of 8 prices for the applicable crop year, the applicable projected price and harvest price will be established in accordance with section I.2(c), 2(e)(1), or 2(f).

Average daily settlement price—The sum of all daily settlement prices divided by the total number of full active trading days included in the sum. The average must include a minimum of 8 prices established on full active trading days. If 8 qualifying prices are not available for the applicable contract month specified for the insured crop in section II of the CEPP–ARPI, additional daily settlement prices will be used to establish the average daily settlement price until 8 qualifying prices are available. If enough additional daily settlement prices are not available to meet the minimum of 8 prices for the applicable crop year, the applicable projected price and harvest price will be established in accordance with section I.2(c), 2(e)(1), or 2(f).

CBOT—Chicago Board of Trade.

CEPP–ARPI—The Commodity Exchange Price Provisions applicable to the Area Risk Protection Insurance plan.

Daily settlement price—A price established in accordance with the CEPP–ARPI which is available for the crop at the end of a full active trading day.

Full active trading day—For all exchanges, any day on which a minimum of 25 open interest contracts for the relevant futures contract are available.

Harvest Price—See the definition in section II.

ICE—Inter Continental Exchange.

KCBT—Kansas City Board of Trade.

MGE—Minneapolis Grain Exchange.

NASS—The National Agricultural Statistics Service, an agency within USDA.

Projected Price—See the definition in section II.

USDA—United States Department of Agriculture.

2. Price Determinations

(a) In accordance with section 1 of the Area Risk Protection Insurance Basic Provisions, these Commodity Exchange Price Provisions (CEPP–ARPI) specify how and when the projected price and harvest price will be determined by crop.

(1) These provisions are a part of the policy for all crops for which area revenue

protection is available, regardless of whether the producer elects area revenue protection or area yield protection for such crops.

(2) This document includes the information necessary to derive the projected price and the harvest price for the insured crop, as applicable.

(b) The CEPP–ARPI will be used to determine:

(1) The projected price and harvest price for insured crops for which area revenue protection is selected; or

(2) The projected price for insured crops for which area yield protection is selected.

(c) RMA reserves the right to omit any daily settlement price or additional daily settlement price if market conditions are different than those used to rate or price area revenue protection.

(d) RMA reserves the right to set the projected price for area yield protection.

(e) If the projected price cannot be calculated by the procedures outlined in these CEPP–ARPI:

(1) No area revenue protection will be available;

(2) If area revenue protection is not available, notice will be provided on RMA's Web site at *http://www.rma.usda.gov/* by the date specified in the applicable projected price definition;

(3) Area yield protection will continue to be available; and

(4) The projected price for area yield protection will be determined by RMA and released by the date specified in the applicable projected price definition in the CEPP–ARPI.

(f) If the harvest price cannot be calculated by the procedures outlined in this CEPP–ARPI, the harvest price will be determined by RMA.

(g) The harvest price will not be greater than the projected price multiplied by 2.00.

(h) Projected prices, harvest prices and associated factors and adjustments for all crops can be found at *http://www.rma.usda.gov/tools/pricediscovery.html.*

Section II: Price Definitions by Crop

Corn (0041)

Grain Type

Projected price—The harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The harvest price will be released no later than three business days following the end of the harvest price discovery period

Corn—March 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date *	Beginning date	Ending date
Illinois	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Indiana	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Iowa	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Michigan	CBOT	Corn	December	Feb 1	Feb 28	Nov 1	Nov 30.
Minnesota	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Missouri	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Nebraska	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Ohio	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
South Dakota	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.
Wisconsin	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31.

* February 28 Ending Date is extended to February 29 in leap years.

Cotton (0021)

Projected price—The harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the tables below, rounded to the nearest whole cent. The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the tables below, rounded to the nearest whole cent. The harvest price will be released no later than three business days following the end of the harvest price discovery period.

Cotton—February 28 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date	Beginning date	Ending date
Arkansas	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.
Georgia	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.
Louisiana	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.
Mississippi	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.
North Carolina	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.
Texas	ICE	Cotton	December	Jan 15	Feb 14	Oct 1	Oct 31.

Cotton—March 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date *	Beginning date	Ending date
Missouri	ICE	Cotton	December	Feb 1	Feb 28	Oct 1	Oct 31.
Tennessee	ICE	Cotton	December	Feb 1	Feb 28	Oct 1	Oct 31.
Texas	ICE	Cotton	December	Feb 1	Feb 28	Oct 1	Oct 31.

* February 28 Ending Date is extended to February 29 in leap years.

Forage (0033)

Projected price—The harvest year's price as set by RMA.

Grain Sorghum (0051)

Projected price—The harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the tables below, rounded to the nearest whole cent, multiplied by the price percentage relationship between grain sorghum and corn, as determined by RMA, and rounded to the nearest whole cent. The price percentage relationship will be available in the Price Discovery Reporting application located at *http://www.rma.usda.gov.* The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the tables below, rounded to the nearest whole cent, multiplied by the price percentage relationship between grain sorghum and corn, as determined by RMA, and rounded to the nearest whole cent. The price percentage relationship will be available in the Price Discovery Reporting application located at *http://www.rma.usda.gov.* The harvest price will be released no later than three business days following the end of the harvest price discovery period.

Grain Sorghum—February 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date	Beginning date	Ending date
Texas	CBOT	Corn	December	Jan 1	Jan 31	Sep 1	Sep 30

Grain Sorghum—March 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date*	Beginning date	Ending date
Kansas	CBOT	Corn	December	Feb 1	Feb 28	Oct 1	Oct 31
Texas	CBOT	Corn	December	Feb 1	Feb 28	Sep 1	Sep 30

* February 28 Ending Date is extended to February 29 in leap years.

Soybeans (0081)

Projected price—The harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The harvest price will be released no later than three business days following the end of the harvest price discovery period.

Soybeans—March 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity	Contract month	Beginning date	Ending date*	Beginning date	Ending date
Illinois	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Indiana	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Iowa	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Michigan	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Minnesota	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Missouri	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Nebraska	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Ohio	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
South Dakota	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31
Wisconsin	CBOT	Soybeans	November	Feb 1	Feb 28	Oct 1	Oct 31

* February 28 Ending Date is extended to February 29 in leap years.

Wheat (0011)

Wheat (September 30 Sales Closing Date)

Projected price—The pre-harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The harvest price will be released no later than three business days following the end of the harvest price discovery period.

Wheat—September 30 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity #	Contract month	Beginning date	Ending date*	Beginning date	Ending date
Arkansas	CBOT	Wheat	July	Aug 15	Sep 14	Jun 1	Jun 30
Colorado	KCBT	HRW Wheat.	September	Aug 15	Sep 14	Jul 1	Jul 31
Illinois	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Indiana	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Kansas	KCBT	HRW Wheat.	July	Aug 15	Sep 14	Jun 1	Jun 30

Wheat—September 30 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity #	Contract month	Beginning date	Ending date*	Beginning date	Ending date
Kentucky	CBOT	Wheat	July	Aug 15	Sep 14	Jun 1	Jun 30
Maryland	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Michigan	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Mississippi	CBOT	Wheat	July	Aug 15	Sep 14	Jun 1	Jun 30
Missouri	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Montana	KCBT	HRW Wheat.	September	Aug 15	Sep 14	Aug 1	Aug 31
Nebraska	KCBT	HRW Wheat.	September	Aug 15	Sep 14	Jul 1	Jul 31
North Carolina	CBOT	Wheat	July	Aug 15	Sep 14	Jun 1	Jun 30
Ohio	CBOT	Wheat	September	Aug 15	Sep 14	Jul 1	Jul 31
Oklahoma	KCBT	HRW Wheat.	July	Aug 15	Sep 14	Jun 1	Jun 30
South Dakota	KCBT	HRW Wheat.	September	Aug 15	Sep 14	Jul 1	Jul 31
Tennessee	CBOT	Wheat	July	Aug 15	Sep 14	Jun 1	Jun 30
Texas	KCBT	HRW Wheat.	July	Aug 15	Sep 14	Jun 1	Jun 30

Hard Red Winter (HRW)

Wheat (0011)

Wheat (March 15 Sales Closing Date)

Projected price—The harvest year's average daily settlement price for the projected price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The projected price will be released no later than three business days following the end of the projected price discovery period.

Harvest price—The harvest year's average daily settlement price for the harvest price discovery period for the harvest year's futures contract, as shown in the table below, rounded to the nearest whole cent. The harvest price will be released no later than three business days following the end of the harvest price discovery period.

Wheat—March 15 sales closing date				Projected price discovery period		Harvest price discovery period	
State	Commodity exchange	Contract commodity #	Contract month	Beginning date	Ending date*	Beginning date	Ending date
Minnesota	MGE	HRS Wheat	September	Feb 1	Feb 28	Aug 1	Aug 31
Montana	MGE	HRS Wheat	September	Feb 1	Feb 28	Aug 1	Aug 31
North Dakota	MGE	HRS Wheat	September	Feb 1	Feb 28	Aug 1	Aug 31
South Dakota	MGE	HRS Wheat	September	Feb 1	Feb 28	Aug 1	Aug 31

Hard Red Spring (HRS).
* February 28 Ending Date is extended to February 29 in leap years.

3. Barley and Peanuts

While the GRP policy covered both barley and peanuts, no coverage had been provided for barley since 1997 and peanut coverage was discontinued in December 2009 due to little business and changes in the peanut industry. FCIC proposes that neither of these crops will be covered under ARPI.

4. Insuring Other Crops—No Written Agreements

FCIC proposes keeping the ARPI policy simple, saving time for producers, insurance providers, and RMA, and improving reporting by crop, by not including written agreements in the proposed policy. Since this product uses an area based yield, rates and prices, if additional crops such as hybrid seed corn and hybrid sorghum seed are determined to be insurable under the ARPI Crop Provisions, they will simply be coded as insurable crops and will be insured using the corn or grain sorghum prices, rates, and yields. The Crop Provisions have been changed to reflect this and the actuarial documents would show hybrid seed corn and hybrid sorghum seed as crops. The proposed policy retains flexibility to determine the insured crops on a yearly basis but it is not FCIC's intention to include popcorn or sweet corn as insurable under ARPI. Insuring crops that are not basic ARPI crops by coding them with their actual crop code will more accurately label the insured data that is necessary for producers to obtain benefits under some other USDA programs. Because these crops are insured with the base crop's yields, rates and prices, it is unnecessary to burden the producer's, insurance provider's, and RMA's time to create written agreements.

5. Calculations

In the GRP and GRIP policies the maximum protection per acre was calculated by multiplying the expected county yield by the price and by a 150 percent multiplier. The multiplier served two purposes: (1) Allowing producers with above average yields to purchase a higher level of liability; and (2) Accounting for the decreased variability of county-average yields as compared to individual yields.

FCIC proposes to keep the multiplier in ARPI but it is now called the ''protection factor'' and serves only the first purpose—allowing producers with above average yields to purchase a higher level of liability. Additionally, the maximum factor is reduced from 150 percent down to a maximum of 120 percent. With respect to the decreased variability of county-average yields as compared to individual yields, RMA is proposing to include a new ''total loss factor.'' This factor allows the entire loss to be paid when the county has a loss equal to the factor. For example, if the total loss factor is .82, and there is a

county loss of 82 percent, a complete indemnity would be paid to the producer. Therefore, this factor will be applied when the final county yield is established instead of when the amount of insurance is established. The combination of reducing the protection factor to 120 and adding a total loss factor allows for ARPI coverage to not appear over-stated but also recognizes, at certain thresholds, a total loss is likely to have occurred and ultimately results in overall coverage with respect to premium and indemnities to be similar to that previously provided by GRP and GRIP.

Under ARPI, the actuarial documents will provide the expected county yield and a projected price. However, the producer will be able to choose a protection factor, from the actuarial documents. Initially the protection factor is anticipated to be set between 0.8–1.2. These three numbers are multiplied together to arrive at a dollar amount of insurance per acre. These proposed changes allow the producer to evaluate the actual county averages and to adjust these numbers for their individual farm.

6. Production Record

FCIC has received considerable input from producers and others regarding the establishment and maintenance of area based county crop insurance programs. Sometimes, there are insufficient data to support area based programs, especially in relying on sufficient and credible data to establish the expected county yield. In addition, if insufficient data are reported to NASS then the final county yields can be questioned or not made publically available. Many producers have advised that they believe FCIC may possess the most credible data available, given significant levels of program participation, and that FCIC should rely more heavily upon its own data, especially in providing producer information as applicable to other USDA programs like the Supplemental Agricultural Disaster Assistance program. Further, ARPI is available for crops covered by other plans of insurance where the reporting of production data is mandatory and participation in such programs is generally higher than in ARPI.

In response, FCIC proposes that expected county yields and final county yields may, at the election of FCIC, be based on crop insurance data, NASS data, other USDA data or other data sources by crop on a nationwide basis. However, FCIC also proposes that if the data source used nationally is not available or credible for specific counties for any given crop year, crop insurance data, NASS data, other USDA data or other data sources may be used for those specific counties. Expected county yields will be released on a crop, type and practice basis, as shown on the Special Provisions. If an expected county yield is not published in the Special Provisions for a particular crop, type and practice, coverage will not be available under this policy.

Further, FCIC proposes to require producers to submit an annual production report by a date specified in the Special Provisions. This will allow FCIC to collect additional information to ensure that the data used to calculate the expected yield for the county is the most accurate, credible data available. Many producers already maintain this data. Given the importance of this collection of information to the maintenance and integrity of the program, FCIC proposes that failure to submit this report will result in the insured's yield for the crop year being set equal to the expected county yield for purposes of computing the final county yield and no indemnity will be paid to the insured for any area-based loss, either yield or price.

List of Subjects in 7 CFR Part 407

Crop insurance, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to revise 7 CFR part 407, Group Risk Plan of Insurance Regulations effective for the 2013 and succeeding crop years, to read as follows:

PART 407—AREA RISK PROTECTION INSURANCE REGULATIONS

Sec.

407.1 Applicability.
407.2 Availability of Federal crop insurance.
407.3 Premium rates, amounts of protection, and coverage levels.
407.4 OMB control numbers.
407.5 Creditors.
407.6 [Reserved]
407.7 The contract.
407.8 The application and policy.
407.9 Area risk protection insurance policy.
407.10 [Reserved]
407.11 Area risk protection insurance for corn.
407.12 Area risk protection insurance for cotton.
407.13 Area risk protection insurance for forage.
407.14 [Reserved]
407.15 Area risk protection insurance for grain sorghum.
407.16 Area risk protection insurance for soybean.
407.17 Area risk protection insurance for wheat.

1. The authority citation for 7 CFR part 407 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Revise §§ 407.1 through 407.17 as follows:

§ 407.1 Applicability.

The provisions of this part are applicable only to those crops for which a Crop Provision is contained in this part and the crop years specified.

§ 407.2 Availability of Federal crop insurance.

(a) Insurance shall be offered under the provisions of this part on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act (7 U.S.C. 1501–1524) (Act). The crops and counties shall be designated by the Manager of the Federal Crop Insurance Corporation (FCIC) from those approved by the Board of Directors of FCIC.

(b) The insurance will be offered through insurance providers reinsured by FCIC under the same terms and conditions as the contract contained in this part. These contracts will be clearly identified as being reinsured by FCIC. Additionally, the contract contained in this part may be offered directly to producers through agents of the United States Department of Agriculture. Those contracts will be specifically identified as being offered by FCIC.

(c) No person may have in force more than one insurance policy issued or reinsured by FCIC on the same crop for the same crop year, in the same county, unless specifically approved in writing by FCIC.

(d) Except as specified in paragraph (c) of this section, if a person has more than one contract authorized under the Act that provides coverage for the same loss on the same crop for the same crop year in the same county, all such contracts shall be voided for that crop year and the person will be liable for the premium on all contracts, unless the person can show to the satisfaction of the FCIC that the multiple contracts of insurance were without the fault of the person.

(1) If the multiple contracts of insurance are shown to be without the fault of the person and:

(i) One contract is an additional coverage policy and the other contract is a Catastrophic Risk Protection policy, the additional coverage policy will apply if both policies are with the same insurance provider, or if not, both insurance providers agree, and the Catastrophic Risk Protection policy will

be canceled (If the insurance providers do not agree, the policy with the earliest date of application will be in force and the other contract will be canceled); or

(ii) Both contracts are additional coverage policies or both are Catastrophic Risk Protection policies, the contract with the earliest signature date on the application will be valid and the other contract on that crop in the county for that crop year will be canceled, unless both policies are with the same insurance provider and the insurance provider agrees otherwise or both policies are with different insurance providers and both insurance providers agree otherwise.

(2) No liability for indemnity or premium will attach to the contracts voided as specified in paragraphs (d)(1)(i) and (ii) of this section.

(e) The person must repay all amounts received in violation of this section with interest at the rate contained in the contract (see § 407.9, section 22).

(f) A person whose contract with FCIC or with an insurance provider reinsured by FCIC under the Act has been terminated, voided, or canceled because of violation of the terms of the contract is not eligible to obtain crop insurance under the Act with FCIC or with an insurance provider reinsured by FCIC unless the person can show that the termination was improper and should not result in subsequent ineligibility.

(g) All applicants for insurance under the Act must advise the insurance provider, in writing at the time of application, of any previous applications for insurance or contracts of insurance under the Act within the last 5 years and the present status of any such applications or insurance.

§ 407.3 Premium rates, amounts of protection, and coverage levels.

(a) The Manager of FCIC shall establish premium rates, amounts of protection, and coverage levels for the insured crop that will be included in the actuarial documents on file in the agent's office. Premium rates, amounts of protection, and coverage levels may be changed from year to year in accordance with the terms of the policy.

(b) At the time the application for insurance is made, the person must elect an amount of protection and a coverage level from among those contained in the actuarial documents for the crop year.

§ 407.4 OMB control numbers.

The information collection activity associated with this rule has been submitted to OMB for their review and approval.

§ 407.5 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 407.6 [Reserved]

§ 407.7 The contract.

(a) The insurance contract shall become effective upon the acceptance by FCIC or the approved provider of a complete, duly executed application for insurance on a form prescribed or approved by FCIC.

(b) The contract shall consist of the accepted application, Area Risk Protection Insurance Basic Provisions, Crop Provisions, Special Provisions, Actuarial Documents, and any amendments, endorsements, or options thereto.

(c) Changes made in the contract shall not affect its continuity from year to year.

(d) No indemnity shall be paid unless the person complies with all terms and conditions of the contract.

(e) The forms required under this part and by the contract are available at the office of the insurance provider, or such other location as specified by FCIC, if applicable.

§ 407.8 The application and policy.

(a) Application for insurance, on a form prescribed or approved by FCIC, must be made by any person who wishes to participate in the program in order to cover such person's share in the insured crop as landlord, owner-operator, tenant, or other crop ownership interest.

(1) No other person's interest in the crop may be insured under the application.

(2) To obtain coverage, the application must be submitted to the insurance provider on or before the applicable sales closing date on file in the insurance provider's local office.

(b) FCIC or the insurance provider may reject, no longer accept applications, or cancel existing insurance contracts upon the FCIC's determination that the insurance risk is excessive. Such determination must be made not later than 15 days before the cancellation date for the crop and may be made on a farm, area, county, state, or crop basis.

§ 407.9 Area risk protection insurance policy.

This insurance is available for the 2013 and succeeding years.

[FCIC policies]

Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance Policy

[Reinsured policies]

(Appropriate title for insurance provider)

(This is a continuous policy. Refer to Section 2.)

[FCIC policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and not receive an indemnity under ARPI.

This is an insurance policy issued by the Federal Crop Insurance Corporation (FCIC), a United States government agency, under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501–1524.). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or modified in any way by us, your insurance agent or any employee of USDA. Procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), issued by us and published on the Risk Management Agency's (RMA) Web site at *http://www.rma.usda.gov/* or a successor Web site, will be used in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. Throughout this policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to FCIC. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by us, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures as issued by us, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy provisions is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) any other Actuarial Documents except the Special Provisions, (4) the applicable Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), *etc.*

[Reinsured policies]

Area Risk Protection Insurance (ARPI) provides protection against widespread loss of revenue or yield in a county. Individual farm revenues and yields are not considered under ARPI and it is possible that your individual farm may experience reduced revenue or reduced yield and not receive an indemnity under ARPI.

This insurance policy is reinsured by the Federal Crop Insurance Corporation (FCIC) under the provisions of the Federal Crop Insurance Act (Act) (7 U.S.C. 1501–1524.). All provisions of the policy and rights and responsibilities of the parties are specifically subject to the Act. The provisions of the policy may not be waived or varied in any way by us, our insurance agent or any other contractor or employee of ours or any employee of USDA. We will use the procedures (handbooks, underwriting rules, manuals, memoranda, and bulletins), as issued by FCIC and published on the Risk Management Agency (RMA's) Web site at *http://www.rma.usda.gov/* or a successor Web site, in the administration of this policy, including the adjustment of any loss or claim submitted hereunder. In the event that we cannot pay your loss because we are insolvent or are otherwise unable to perform our duties under our reinsurance agreement with FCIC, FCIC will become your insurer, make all decisions in accordance with the provisions of this policy, including any loss payments, and be responsible for any amounts owed. No state guarantee fund will be liable for your loss.

Throughout this policy, ''you'' and ''your'' refer to the named insured shown on the accepted application and ''we,'' ''us,'' and ''our'' refer to the insurance company providing insurance. Unless the context indicates otherwise, the use of the plural form of a word includes the singular and the singular form of the word includes the plural.

AGREEMENT TO INSURE: In return for the payment of premium, and subject to all of the provisions of this policy, we agree with you to provide the insurance as stated in this policy. If there is a conflict between the Act, the regulations published at 7 CFR chapter IV, and the procedures as issued by FCIC, the order of priority is: (1) The Act; (2) the regulations; and (3) the procedures as issued by FCIC, with (1) controlling (2), *etc.* If there is a conflict between the policy provisions published at 7 CFR part 407 and the administrative regulations published at 7 CFR part 400, the policy provisions published at 7 CFR part 407 control. The order of priority among the policy provisions is: (1) the Catastrophic Risk Protection Endorsement, as applicable; (2) the Special Provisions; (3) any other Actuarial Documents except the Special Provisions, (4) the applicable Commodity Exchange Price Provisions; (5) the Crop Provisions; and (6) these Basic Provisions, with (1) controlling (2), *etc.*

Terms and Conditions

Basic Provisions

1. Definitions

Abandon. Failure to continue to care for the crop, or providing care so insignificant as to provide no benefit to the crop.

Acreage report. A report required by section 8 of these Basic Provisions that contains, in addition to other required information, your report of your share of all acreage of an insured crop in the county, whether insurable or not insurable.

Acreage reporting date. The date contained in the Special Provisions by which you are required to submit your acreage report.

Act. Federal Crop Insurance Act (7 U.S.C. 1501–1524).

Actuarial documents. The information for the crop year, including Special Provisions, which is available for public inspection in your agent's office and published on RMA's Web site, *http://www.rma.usda.gov/,* and which shows available plans of insurance, coverage levels, information needed to determine amounts of insurance, prices, premium rates, premium adjustment percentages, practices, particular types or varieties of the insurable crop, insurable acreage, and other related information regarding crop insurance in the county.

Additional coverage. A level of coverage greater than catastrophic risk protection.

Administrative fee. An amount you must pay for catastrophic risk protection, and additional coverage for each crop year as specified in section 7 of these provisions, the Catastrophic Risk Protection Endorsement, or the actuarial documents, as applicable.

Agricultural experts. Persons who are employed by the Cooperative Extension System or the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific crop or practice for which such expertise is sought. If the person has a personal or financial interest in you or the crop, they will not qualify as an agricultural expert. For example, contracting with the person for consulting would be considered to have a financial interest and a person who is a neighbor would be considered to have a personal interest.

Application. The form required to be completed by you and accepted by us before insurance coverage will commence. This form must be completed and filed in your agent's office not later than the sales closing date of the initial insurance year for each crop for which insurance coverage is requested.

Area. The general geographical region in which the insured acreage is located, designated generally as a county but may be a smaller or larger geographical area as specified in the actuarial documents.

Area Revenue Protection. A plan of insurance that provides protection against loss of revenue due to a county level production loss, a price decline, or a combination of both. This plan also includes upside harvest price protection, which increases your policy protection at the end of the insurance period if the harvest price is greater than the projected price and if there is a production loss.

Area Revenue Protection with the Harvest Price Exclusion. A plan of insurance that provides protection against loss of revenue due to a county level production loss, price decline, or a combination of both. This plan does not provide upside harvest price protection.

Area Risk Protection Insurance (ARPI). Insurance coverage based on an area, not an individual, yield or revenue amount. There are three plans of insurance available under ARPI: Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection.

Area Yield Protection. A plan of insurance that provides protection against loss of yield due to a county level production loss. This plan does not provide revenue protection or upside harvest price protection.

Assignment of indemnity. A transfer of policy rights, made on our form, and effective when approved in writing by us. It is the arrangement whereby you assign your right to an indemnity payment for the crop year but such assignment can only be made to creditors or other persons to whom you have a financial debt or other pecuniary obligation.

Buffer zone. A parcel of land, as designated in your organic plan, that separates agricultural commodities grown under organic practices from agricultural commodities grown under non-organic practices, and used to minimize the possibility of unintended contact by prohibited substances or organisms.

Cancellation date. The calendar date specified in the Crop Provisions on which coverage for the crop will automatically renew unless canceled in writing by either you or us or terminated in accordance with the policy terms.

Catastrophic risk protection (CAT). Coverage equivalent to 65 percent of yield coverage and 45 percent of price coverage, unless otherwise specified in the Special Provisions, and is the minimum level of coverage offered by FCIC, as specified in the actuarial documents for the crop, type, and practice. Catastrophic risk protection is not available with Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion.

Catastrophic Risk Protection Endorsement. The part of the crop insurance policy that contains provisions of insurance that are specific to catastrophic risk protection.

Certified organic acreage. Acreage in the certified organic farming operation that has been certified by a certifying agent as conforming to organic standards in accordance with 7 CFR part 205.

Certifying agent. A private or governmental entity accredited by the USDA Secretary of Agriculture for the purpose of certifying a production, processing or handling operation as organic.

Code of Federal Regulations (CFR). The codification of general rules published in the **Federal Register** by the Executive departments and agencies of the Federal Government. Rules published in the **Federal Register** by FCIC are contained in 7 CFR chapter IV. The full text of the CFR is available in electronic format at *http://www.access.gpo.gov/* or a successor Web site.

Commodity. Any crop or other agricultural commodity produced, regardless of whether or not it is insurable.

Commodity Exchange Price Provisions (CEPP–ARPI). A part of the policy that is used for crops for which ARPI is available, unless otherwise specified. This document includes the information necessary to derive the projected and harvest price for the insured crop, as applicable.

Consent. Approval in writing by us allowing you to take a specific action.

Contract change date. The calendar date, as specified in the Crop Provisions, by which changes to the policy, if any, will be made available in accordance with section 3 of these Basic Provisions.

Contract. (See ''policy'').

Conventional farming practice. A system or process that is necessary to produce an agricultural commodity, excluding organic farming practices.

Cooperative Extension System. A nationwide network consisting of a state office located at each state's land-grant university, and local or regional offices. These offices are staffed by one or more agricultural experts who work in cooperation with the National Institute of Food and Agriculture, and who provide information to agricultural producers and others.

County. Any county, parish, political subdivision of a state, or other area specified on the actuarial documents shown on your accepted application.

Cover crop. A crop generally recognized by agricultural experts as agronomically sound for the area for erosion control or other purposes related to conservation or soil improvement. A cover crop may be considered to be a second crop (see the definition of ''second crop'').

Credible. Data of sufficient quality and quantity to be representative of the county.

Crop Provisions. The part of the policy that contains the specific provisions of insurance for each insured crop.

Crop year. The period within which the insured crop is normally grown and designated by the calendar year in which the crop is normally harvested.

Days. Calendar days.

Delinquent debt. Has the same meaning as the term defined in 7 CFR part 400, subpart U.

Disinterested third party. A person: (1) That does not have any familial relationship (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to have a familial relationship) with you; or (2) Who will not benefit, directly or indirectly from the sale of the insured crop.

Dollar amount of insurance per acre. The guarantee, calculated by multiplying the expected county yield by the projected price and by the protection factor. Your dollar amount of insurance per acre is shown on your Summary of Protection. Following release of the harvest price, your dollar amount of insurance may increase if Area Revenue Protection was purchased and the harvest price is greater than the projected price.

Double crop. Producing two or more crops for harvest on the same acreage in the same crop year.

Expected county revenue. The expected county yield multiplied by the projected price.

Expected county yield. The yield contained in the actuarial documents on which your coverage for the crop year is based.

FCIC. The Federal Crop Insurance Corporation, a wholly owned corporation within USDA.

Final county revenue. The revenue determined by multiplying the final county yield by the harvest price with the result used to determine whether an indemnity will be due for Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion, and released by RMA at a time specified in the Crop Provisions.

Final county yield. The yield for each insured crop, type, and practice, used to determine whether an indemnity will be due for Area Yield Protection, and released by RMA at a time specified in the Crop Provisions.

Final planting date. The date contained in the Special Provisions for the insured crop by which the crop must be planted in order to be insured. For ARPI, this date is generally consistent with the last day of the late planting period under other reinsured policies for the same crop.

Final policy protection. For Area Revenue Protection only, the amount calculated in accordance with section 12(e).

First insured crop. With respect to a single crop year and any specific crop acreage, the first instance that an agricultural commodity is planted for harvest or prevented from being planted and is insured under the authority of the Act. For example, if winter wheat that is not insured is planted on acreage that is later planted to soybeans that are insured, the first insured crop would be soybeans. If the winter wheat was insured, it would be the first insured crop.

FSA. The Farm Service Agency, an agency of the USDA, or a successor agency.

FSA serial farm number. The number assigned to the farm by the local FSA office.

Generally recognized. When agricultural experts or organic agricultural experts, as applicable, are aware of the production method or practice and there is no genuine dispute regarding whether the production method or practice allows the crop to make normal progress toward maturity.

Good farming practices. The production methods utilized to produce the insured crop, type, and practice as shown in the Special Provisions and allow it to make normal progress toward maturity, which are: (1) for conventional or sustainable farming practices, those generally recognized by agricultural experts for the area; or (2) for organic farming practices, those generally recognized by organic agricultural experts for the area or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good farming practices.''

Harvest price. A price determined in accordance with the CEPP–ARPI and used to determine the final county revenue.

Household. A domestic establishment including the members of a family (parents, brothers, sisters, children, spouse, grandchildren, aunts, uncles, nieces, nephews, first cousins, or grandparents, related by blood, adoption or marriage, are considered to be family members) and others who live under the same roof.

Insurable interest. When the person has a financial risk of loss in the insured crop as an owner, operator, or tenant at the time insurance attaches.

Insurable loss. Damage for which coverage is provided under the terms of your policy, and for which you accept an indemnity payment.

Insurance Provider (insurance provider). A private insurance company that has been approved by FCIC to provide insurance coverage to producers participating in programs authorized by the Act. We are an insurance provider.

Insured. The named person as shown on the application accepted by us. This term does not extend to any other person having an insurable interest in the crop (*e.g.,* a partnership, landlord, or any other person) unless specifically indicated on the accepted application.

Insured crop. The crop in the county for which coverage is available under your policy as shown on the application accepted by us.

Liability. (See ''Policy protection'').

Limited resource farmer. Has the same meaning as the term defined by USDA at *http://www.lrftool.sc.egov.usda.gov/LRP–D.htm).*

NASS. National Agricultural Statistics Service, an agency within USDA, or its successor, that publishes the official United States Government yield estimates.

Native sod. Acreage that has no record of being tilled (determined in accordance with FSA or other verifiable records acceptable to us) for the production of an annual crop on or before May 22, 2008, and on which the plant cover is composed principally of native grasses, grass-like plants, forbs, or shrubs suitable for grazing and browsing.

Offset. The act of deducting one amount from another amount.

Organic agricultural experts. Persons who are employed by the following organizations: Appropriate Technology Transfer for Rural Areas, Sustainable Agriculture Research and Education or the Cooperative Extension System, the agricultural departments of universities, or other persons approved by FCIC, whose research or occupation is related to the specific organic crop or practice for which such expertise is sought.

Organic crop. An agricultural commodity that is organically produced consistent with section 2103 of the Organic Foods Act of 1990 (7 U.S.C. 6502).

Organic farming practice. A system of plant production practices used to produce an organic crop that is approved by a certifying agent in accordance with 7 CFR part 205, or a successor regulation.

Organic plan. A written plan, in accordance with the National Organic Program published in 7 CFR part 205, or a successor regulation, that describes the organic farming practices that you and a certifying agent agree upon annually or at such other times as prescribed by the certifying agent.

Organic standards. Standards in accordance with the Organic Foods Production Act of 1990 (7 U.S.C. 6501 *et seq.*) and 7 CFR part 205, or a successor regulation.

Payment Factor. A factor used to determine the amount of indemnity to be paid in accordance with section 12(g).

Perennial crop. A plant, bush, tree or vine crop that has a life span of more than one year.

Person. An individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State. ''Person'' does not include the United States Government or any agency thereof.

Planted acreage. Land in which seed, plants, or trees have been placed, appropriate for the insured crop and planting method, at the correct depth, into a seedbed that has been properly prepared for the planting method and production practice in accordance with good farming practices for the area.

Policy. The agreement between you and us to insure an agricultural commodity and consisting of the accepted application, these Basic Provisions, the Crop Provisions, the Special Provisions, the CEPP–ARPI, other applicable endorsements or options, the actuarial documents for the insured agricultural commodity, the CAT Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Insurance for each agricultural commodity in each county will constitute a separate policy.

Policy protection. The liability amount calculated in accordance with section 6(f).

Practice. The production methodologies, qualifying as good farming practices, that are used to produce the crop. Specific practices that are insured may be listed in the actuarial documents.

Prairie Pothole National Priority Area. Consists of specific counties within the States of Iowa, Minnesota, Montana, North Dakota, South Dakota, or any other county as specified on the RMA's Web site at *http://www.rma.usda.gov*, or a successor Web site, or the Farm Service Agency, Agricultural Resource Conservation Program 2–CRP (Revision 4), dated April 28, 2008, or a subsequent publication.

Premium billing date. The earliest date upon which you will be billed for insurance coverage based on your acreage report. The premium billing date is contained in the Special Provisions.

Prohibited substance. Any biological, chemical, or other agent that is prohibited from use or is not included in the organic standards for use on any certified organic, transitional or buffer zone acreage. Lists of such substances are contained at 7 CFR part 205, or a successor regulation.

Projected price. A price for each crop, type, and practice as shown in the Special Provisions, as applicable, determined in accordance with the CEPP–ARPI, Special Provisions or the Crop Provisions, as applicable.

Protection factor (PF) The percentage you choose, from those offered in the actuarial documents, for each crop, type and practice as shown in the Special Provisions, and is used to calculate the dollar amount of insurance per acre and policy protection.

Replanted crop. The same agricultural commodity replanted on the same acreage as the first insured crop for harvest in the same crop year. ARPI does not have a replant provision so it is only used for first and second crop determinations.

RMA. Risk Management Agency, an agency within USDA.

RMA's Web site. A Web site hosted by RMA and located at *http://www.rma.usda.gov/* or a successor Web site.

Sales closing date. The date contained in the Special Provisions by which an application must be filed and the last date by which you may change your crop insurance coverage for a crop year.

Second crop. With respect to a single crop year, the next occurrence of planting any agricultural commodity for harvest following a first insured crop on the same acreage. The second crop may be the same or a different agricultural commodity as the first insured crop, except the term does not include a replanted crop. A cover crop, planted after a first insured crop and planted for the purpose of haying, grazing or otherwise harvesting in any manner or that is hayed or grazed during the crop year, or that is otherwise harvested is considered to be a second crop. A cover crop that is covered by FSA's noninsured crop disaster assistance program (NAP) or receives other USDA benefits associated with forage crops will be considered as planted for the purpose of haying, grazing or otherwise harvesting. A crop meeting the conditions stated herein will be considered to be a second crop regardless of whether or not it is insured.

Share. Your percentage of the insured crop that is at financial risk. Premium will be determined on your share as of the acreage reporting date. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the acreage reporting date or on the date of harvest, whichever is less.

Special Provisions. The part of the policy that contains specific provisions of insurance for each insured crop that may vary by geographic area.

State. The state shown on your accepted application.

Subsidy. The portion of the total premium that FCIC will pay in accordance with the Act.

Subsidy factor. The percentage of the total premium paid by FCIC as a subsidy.

Substantial beneficial interest. An interest held by any person of at least 10 percent in you (*e.g.,* there are two partnerships that each have a 50 percent interest in you and each partnership is made up of two individuals, each with a 50 percent share in the partnership. In this case, each individual would be considered to have a 25 percent interest in you, and both the partnerships and the individuals would have a substantial beneficial interest in you. The spouses of the individuals would not be considered to have a substantial beneficial interest unless the spouse was one of the individuals that made up the partnership. However, if each partnership is made up of six individuals with equal interests, then each would only have an 8.33 percent interest in you and although the partnership would still have a substantial beneficial interest in you, the individuals would not for the purposes of reporting in section 2). The spouse of any individual applicant or individual insured will be presumed to have a substantial beneficial interest in the applicant or insured unless the spouses can prove they are legally separated or otherwise legally separate under the applicable state dissolution of marriage laws. Any child of an individual applicant or individual insured will not be considered to have a substantial beneficial interest in the applicant or insured unless the child has a separate legal interest in such person.

Summary of protection. Our statement to you specifying the insured crop, dollar amount of insurance per acre, policy protection, premium and other information obtained from your accepted application, acreage report, and the actuarial documents.

Sustainable farming practice. A system or process for producing an agricultural commodity, excluding organic farming practices, that is necessary to produce the crop and is generally recognized by agricultural experts for the area to conserve or enhance natural resources and the environment.

Tenant. A person who rents land from another person for a share of the crop or a share of the proceeds of the crop (see the definition of ''share'' above).

Termination date. The calendar date contained in the Crop Provisions upon which your insurance ceases to be in effect because of nonpayment of any amount due us under the policy.

Tilled. The termination of existing plants by plowing, disking, burning, application of chemicals, or by other means to prepare acreage for the production of an annual crop.

Total loss factor. A factor found in the actuarial documents and used to calculate the payment factor. This factor represents the level of the county loss at which the total indemnity amount is payable. For example, if the factor is .82, then the policy will pay out the total indemnity amount once the county level loss reaches 82 percent or greater. The total indemnity will never be more than 100 percent of the final policy protection.

Total Premium. The amount of premium before subsidy, calculated in accordance with section 7(e)(1).

Transitional acreage. Acreage on which organic farming practices are being followed that does not yet qualify to be designated as organic acreage.

Trigger revenue. The revenue amount calculated in accordance with section 12(b).

Trigger yield. The yield amount calculated in accordance with section 12(c).

Type. The categories of the insured crop having common traits and characteristics. Types that are insured may be listed in the actuarial documents.

Upside harvest price protection. Coverage provided automatically under the Area Revenue Protection plan of insurance. This coverage increases your final policy protection when the harvest price is greater than the projected price. This coverage is not available under either the Area Revenue Protection with the Harvest Price Exclusion or the Area Yield Protection plans of insurance.

USDA. United States Department of Agriculture.

Verifiable records. Has the same meaning as the term defined in 7 CFR part 400, subpart G.

Void. When the policy is considered not to have existed for a crop year.

Volatility factor. A measure of variation of price over time found in the actuarial documents.

2. Life of Policy, Cancellation, and Termination

(a) This is a continuous policy and will remain in effect for each crop year following the acceptance of the original application until canceled by you in accordance with the terms of the policy or terminated by operation of the terms of the policy or by us. In accordance with section 3, FCIC may change the coverage provided from year to year.

(b) All the information in this subsection must be included in your application for insurance or your application will not be accepted and no coverage will be provided. The following information must be included in your application:

(1) Your election of either Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, or Area Yield Protection;

(2) The crop with all type and practice combinations insured as shown on the Special Provisions;

(3) Your elected coverage level;

(4) Your elected percentage of the projected price (Only 100 percent is allowed for Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion);

(5) Your elected protection factor;

(6) Identification numbers for the insured as follows:

(i) You must include your social security number (SSN) if you are an individual (if you are an individual applicant operating as a business, including joint ventures, limited liability companies, and trusts, you may provide an employer identification number (EIN) but must also provide your SSN); or

(ii) You must include your EIN if you are a person other than an individual;

(7) Identification numbers for all persons who have a substantial beneficial interest in you:

(i) The SSN for individuals; or

(ii) The EIN for persons other than individuals and the SSNs for all individuals that comprise the person with the EIN if such individuals also have a substantial beneficial interest in you; and

(8) Any other material information required on the application to insure the crop.

(c) With respect to SSNs or EINs required on your application:

(1) If a person with a substantial beneficial interest in you is not eligible for insurance and that person's SSN or EIN was correctly reported on your application, the insurance coverage for all crops included on your application will be reduced proportionately, by the percentage interest in you, of the ineligible persons with a substantial beneficial interest in you (If your spouse is ineligible, then you are ineligible);

(2) Your application will not be accepted and no insurance will be provided for the year of application if the application does not contain the SSN or EIN for you or any person with a substantial beneficial interest in you (If your application contains an incorrect SSN or EIN for you or any person with a substantial beneficial interest in you, your application will be considered not to have been accepted, no insurance will be provided for the year of application and for any subsequent crop years, as applicable, and such policies will be void unless:

(i) Such number is corrected or provided by you, as applicable; or

(ii) You provide evidence that demonstrates to our satisfaction that the omitted or incorrect SSN or EIN was an inadvertent error.); and

(3) Your policy will be void for all applicable crop years if it is determined by us at any time that an incorrect or omitted SSN or EIN, provided on the application, would have allowed you, or a person with a substantial beneficial interest in you, to:

(i) Obtain disproportionate benefits under the crop insurance program; or

(ii) Avoid an obligation or requirement under any state or Federal law.

(d) When any of your policies are void under sections 2(c)(2) or 2(c)(3):

(1) You must repay any indemnity that may have been paid for all applicable crops and crop years;

(2) Even though the policies are void, you will still be required to pay an amount equal to 20 percent of the premium that you would otherwise be required to pay; and

(3) If you previously paid premium or administrative fees, any amount in excess of the amount required in section 2(d)(2) will be returned to you.

(e) Notwithstanding any of the provisions in this section, you may be subject to civil, criminal or administrative sanctions if you certify to an incorrect SSN or EIN or any other information under this policy.

(f) If any of your information, or that of persons with a substantial beneficial interest in you, changes:

(1) After the sales closing date but before the acreage reporting date for the crop year, you must revise the information by the acreage report date; or

(2) After the acreage reporting date, you must revise the information prior to the payment of any claim; and

(3) You fail to timely provide the required revisions, the provisions in section 2(c)(1) and 2(c)(3) will apply.

(g) If you are, or a person with a substantial beneficial interest in you, is not eligible to obtain a SSN or EIN, whichever is required, you must request an assigned number for the purposes of this policy from us:

(1) A number will be provided only if you can demonstrate you are, or a person with a substantial beneficial interest in you is, eligible to receive Federal benefits;

(2) If a number cannot be provided for you in accordance with section (2)(g)(1), your application will not be accepted; or

(3) If a number cannot be provided for any person with a substantial beneficial interest in you in accordance with section 2(g)(1), the amount of coverage for all crops on the application will be reduced proportionately by the percentage interest of such person in you.

(h) After acceptance of the application, you may not cancel this policy for the initial crop year unless you choose to insure the entire crop under another Federally reinsured plan of insurance with the same insurance provider on or before the sales closing date. After the first year, the policy will continue in force for each succeeding crop year unless canceled, voided or terminated as provided in this section.

(i) Either you or we may cancel this policy after the initial crop year by providing written notice to the other on or before the cancellation date shown in the Crop Provisions.

(j) Any amount due to us for any policy authorized under the Act will be offset from any indemnity due you for this or any other crop insured with us under the authority of the Act.

(1) Even if your claim has not yet been paid, you must still pay the premium and administrative fee on or before the termination date for you to remain eligible for insurance.

(2) If we offset any amount due us from an indemnity owed to you, the date of payment for the purpose of determining whether you have a delinquent debt will be the date RMA publishes the final county yield for the applicable crop year.

(k) A delinquent debt for any policy will make you ineligible to obtain crop insurance authorized under the Act for any subsequent crop year and result in termination of all policies in accordance with section 2(k)(2).

(1) With respect to ineligibility:

(i) Ineligibility for crop insurance will be effective on:

(A) The date that a policy was terminated in accordance with section 2(k)(2) for the crop for which you failed to pay premium, an administrative fee, or any related interest owed, as applicable;

(B) The payment due date contained in any notification of indebtedness for any overpaid indemnity if you fail to pay the amount owed, including any related interest owed, as applicable, by such due date;

(C) The termination date for the crop year prior to the crop year in which a scheduled payment is due under a written payment agreement if you fail to pay the amount owed by any payment date in any agreement to pay the debt; or

(D) The termination date the policy was or would have been terminated under sections 2(k)(2)(i)(A), (B) or (C) if your bankruptcy petition is dismissed before discharge.

(ii) If you are ineligible and a policy has been terminated in accordance with section 2(k)(2), you will not receive any indemnity, and such ineligibility and termination of the policy may affect your eligibility for benefits under other USDA programs. Any indemnity that may be owed for the policy before it has been terminated will remain owed to you, but may be offset in accordance with section 2(j), unless your policy was terminated in accordance with sections 2(k)(2)(i)(A), (B), or (D).

(2) With respect to termination:

(i) Termination will be effective on:

(A) For a policy with unpaid administrative fees or premiums, the termination date immediately subsequent to the billing date for the crop year (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity will be owed);

(B) For a policy with other amounts due, the termination date immediately following the date you have a delinquent debt (For policies for which the sales closing date is prior to the termination date, such policies will terminate for the current crop year even if insurance attached prior to the termination date. Such termination will be considered effective as of the sales closing date and no insurance will be considered to have attached for the crop year and no indemnity will be owed);

(C) For all other policies that are issued by us under the authority of the Act, the termination date that coincides with the termination date for the policy with the delinquent debt, or if there is no coincidental termination date, the termination date immediately following the date you become ineligible; or

(D) For dismissal of a bankruptcy petition before discharge, the termination date the policy was or would have been terminated under sections 2(k)(2)(i)(A), (B) or (C).

(ii) For all policies terminated under sections 2(k)(2)(i)(A), (B), or (D), any indemnities paid subsequent to the termination date must be repaid.

(iii) Once the policy is terminated, it cannot be reinstated for the current crop year unless the termination was in error. Failure to timely pay because of illness, bad weather, or other such extenuating circumstances is not grounds for reinstatement in the current crop year.

(3) To regain eligibility, you must:

(i) Repay the delinquent debt in full; or

(ii) File a petition to have your debts discharged in bankruptcy (Dismissal of the bankruptcy petition before discharge will terminate all policies in effect retroactive to the date your policy would have been terminated in accordance with section 2(k)(2)(i);

(4) If you are determined to be ineligible under section 2(k), persons with a substantial beneficial interest in you may also be ineligible until you become eligible again.

(l) In cases where there has been a death, disappearance, judicially declared incompetence, or dissolution of marriage of any insured person:

(1) If any married insured dies, disappears, or is judicially declared incompetent, the named insured on the policy will automatically convert to the name of the spouse if:

(i) The spouse was included on the policy as having a substantial beneficial interest in the named insured; and

(ii) The spouse has a share of the crop.

(2) The provisions in section 2(l)(3) will only be applicable if:

(i) Any partner, member, shareholder, *etc.,* of an insured entity dies, disappears, or is judicially declared incompetent, and such event automatically dissolves the entity; or

(ii) An individual whose estate is left to a beneficiary other than a spouse or left to the spouse and the criteria in section 2(l)(1) are not met, dies, disappears, or is judicially declared incompetent.

(3) If the death, disappearance, or judicially declared incompetence occurred:

(i) More than 30 days before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) Thirty days or less before the cancellation date, or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period:

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(4) If any insured entity is dissolved for reasons other than death, disappearance, or judicially declared incompetence:

(i) Before the cancellation date, the policy is automatically canceled as of the cancellation date and a new application must be submitted; or

(ii) On or after the cancellation date, the policy will continue in effect through the crop year immediately following the cancellation date and be automatically canceled as of the cancellation date immediately following the end of the insurance period for the crop year, unless canceled by the cancellation date prior to the start of the insurance period.

(A) A new application for insurance must be submitted prior to the sales closing date for coverage for the subsequent crop year; and

(B) Any indemnity will be paid to the person or persons determined to be beneficially entitled to the payment provided such person or persons comply with all policy provisions and timely pays the premium.

(5) If section 2(k)(2) or (4) applies, a remaining member of the insured person or the beneficiary is required to report to us the death, disappearance, judicial incompetence, or other event that causes dissolution of the entity not later than the next cancellation date, except if section 2(k)(3)(ii) applies, notice must be provided by the cancellation date for the next crop year.

(m) We may cancel your policy if no premium is earned for 3 consecutive years.

(n) The cancellation and termination dates are contained in the Crop Provisions.

(o) When obtaining catastrophic or additional coverage, you must provide information regarding crop insurance coverage on any crop previously obtained at any other local FSA office or from an insurance provider, including the date such insurance was obtained and the amount of the administrative fee.

(p) Any person may sign any document relative to crop insurance coverage on behalf of any other person covered by such a policy, provided that the person has a properly executed power of attorney or such other legally sufficient document authorizing such person to sign. You are still responsible for the accuracy of all information provided on your behalf and may be subject to the consequences in section 8(f), and any other consequences, including administrative, criminal or civil sanctions, if any information has been misreported.

(q) If cancellation or termination of insurance coverage occurs for any reason, including but not limited to indebtedness, suspension, debarment, disqualification, cancellation by you or us or violation of the controlled substance provisions of the Food Security Act of 1985, a new application must be filed for the crop.

(1) Insurance coverage will not be provided if you are ineligible under the contract or under any Federal statute or regulation.

(2) Since applications for crop insurance cannot be accepted after the sales closing date, if you make any payment, or you otherwise become eligible, after the sales closing date, you cannot apply for insurance until the next crop year. For example, for the 2010 crop year, if crop A, with a termination date of October 31, 2010, and crop B, with a termination date of March 15, 2011, are insured and you do not pay the premium for crop A by the termination date, you are ineligible for crop insurance as of October 31, 2010, and crop A's policy is terminated as of that date. Crop B's policy does not terminate until March 15, 2011, and an indemnity for the 2010 crop year may still be owed. You will not be eligible to apply for crop insurance for any crop until after the amounts owed are paid in full or you file a petition to discharge the debt in bankruptcy.

3. Contract Changes

(a) We may change the terms and conditions of this policy from year to year.

(b) Any changes in policy provisions, actuarial documents, the CEPP–ARPI, expected county yields, premium rates, and program dates can be viewed on RMA's Web site not later than the contract change date contained in the Crop Provisions. We may only revise this information after the contract change date to correct obvious errors (*e.g.,* the expected county revenue for a county was announced at $2,500 per acre instead of $250 per acre).

(c) After the contract change date, all changes specified in section 3(b) will also be available upon request from your crop insurance agent.

(d) You will be provided, in writing, a copy of the changes to the Basic Provisions, Crop Provisions, CEPP–ARPI, and Special Provisions not later than 30 days prior to the cancellation date for the insured crop. If available from us, you may elect to receive these documents and changes electronically.

(e) Acceptance of the changes made to the Basic Provisions, Crop Provisions, CEPP–ARPI, Special Provisions, and actuarial documents will be conclusively presumed in the absence of notice from you to change or cancel your insurance coverage.

4. Insured Crop

(a) The insured crop will be that shown on your accepted application and as specified in the Crop Provisions or Special Provisions, and must be grown on insurable acreage.

(b) A crop which will NOT be insured will include, but will not be limited to, any crop:

(1) That is not grown on planted acreage;

(2) That is a type not generally recognized for the area;

(3) For which the information necessary for insurance (projected price, expected county yield, premium rate, *etc.*) is not included in the actuarial documents;

(4) That is a volunteer crop;

(5) Planted following the same crop on the same acreage and the first planting of the crop has been harvested in the same crop year unless specifically permitted by the Crop Provisions or the Special Provisions (For example, the second planting of grain sorghum would not be insurable if grain sorghum had already been planted and harvested on the same acreage during the crop year);

(6) That is planted for experimental purposes;

(7) That is not specified in the actuarial documents; or

(8) That is used solely for wildlife protection or management. If the lease states that specific acreage must remain unharvested, only that acreage is uninsurable. If the lease specifies that a percentage of the crop must be left unharvested, your share will be reduced by such percentage.

(c) Although certain policy documents may state that a specific crop, type, or practice is not insurable, it does not mean all other crops, types, or practices are insurable. To be insurable, the use of such crop, type, practice, must be a good faming practice, have been widely used in the county, and meet all the conditions in the Basic Provisions, the Crop Provisions, Special Provisions, and the actuarial documents.

5. Insurable Acreage

(a) Except as provided in section 5(c), the insurable acreage is all of the acreage of the insured crop for which a premium rate is provided by the actuarial documents, in which you have a share, and which is planted in the county listed on your accepted application. The dollar amount of insurance per acre, amount of premium, and indemnity will be calculated separately for each crop, type, and practice shown on the Special Provisions.

(1) The acreage must have been planted and harvested (Grazing is not considered harvested for the purposes of this section) or insured (Excluding pasture, rangeland, and forage, vegetation and rainfall insurance or any other specific policy listed in the Special Provisions) in at least one of the three previous crop years unless:

(i) Such acreage was not planted:

(A) In at least two of the three previous crop years to comply with any other USDA program;

(B) Due to the crop rotation, the acreage would not have been planted in the previous three years (*e.g.,* a crop rotation of corn, soybeans, and alfalfa; and the alfalfa remained for four years before the acreage was planted to corn again); or

(C) Because a perennial crop was on the acreage in at least two of the previous three crop years;

(ii) Such acreage constitutes five percent or less of the insured planted acreage of the crop, type and practice as shown on the Special Provisions in the county;

(iii) Such acreage was not planted or harvested because it was pasture or rangeland and the crop to be insured is also pasture or rangeland; or

(iv) The Crop Provisions or Special Provisions specifically allows insurance for such acreage.

(b) Only the acreage planted to the insured crop on or before the final planting date, as shown in the Special Provisions, and reported by the acreage reporting date and physically located in the county shown on your accepted application will be insured.

(c) We will not insure any acreage:

(1) Where the crop was destroyed or put to another use during the crop year for the purpose of conforming with, or obtaining a payment under, any other program administered by the USDA;

(2) Where we determine you have failed to follow good farming practices for the insured crop (We will remove the acreage for which good farming practices were not carried out from the acreage report, no premium will be due, and no indemnity paid);

(3) Where the conditions under which the crop is planted are not generally recognized for the area (For example, where agricultural experts determine that planting a non-irrigated corn crop after a failed small grain crop on the same acreage in the same crop year is not appropriate for the area);

(4) Of a second crop, if you elect not to insure such acreage when an indemnity for a first insured crop may be subject to reduction in accordance with the provisions of section 13 and you intend to collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop acreage. This election must be made for all first insured crop acreage that may be subject to an indemnity reduction if the first insured crop is insured under this policy, or on a first insured crop unit basis if the first insured crop is not insured under this policy, *e.g.,* if the first insured crop under this policy consists of 40 acres, or the first insured crop unit insured under another policy contains 40 planted acres, then no second crop can be insured on any of the 40 acres. In this case:

(i) If the first insured crop is insured under ARPI, you must provide written notice to us of your election not to insure acreage of a second crop by the acreage reporting date for the second crop if it is insured under ARPI, or before planting the second crop if it is insured under any other policy;

(ii) If the first insured crop is not insured under ARPI, at the time the first insured crop acreage is released by us or another insurance provider who insures the first insured crop (if no acreage in the first insured crop unit is released, this election must be made by the earlier of acreage reporting date for the second crop or when you sign the claim for the first insured crop);

(iii) If you fail to provide a notice as specified in section 5(c)(5)(i) or 5(c)(5)(ii), the second crop acreage will be insured in accordance with applicable policy provisions and you must repay any overpaid indemnity for the first insured crop;

(iv) In the event a second crop is planted and insured with a different insurance provider, or planted and insured by a different person, you must provide written notice to each insurance provider that a second crop was planted on acreage on which you had a first insured crop; and

(v) You must report the crop acreage that will not be insured on the applicable acreage report; and

(5) Of a crop planted following a second crop or following an insured crop that is prevented from being planted after a first insured crop.

(d) If the Governor of a State designated within the Prairie Pothole National Priority Area elects to make section 508(o) of the Act effective for the State, any native sod acreage greater than five acres located in a county contained within the Prairie Pothole National Priority Area that has been tilled after May 22, 2008, is not insurable for the first five crop years of planting following the date the native sod acreage is tilled.

(1) If the Governor makes this election after you have received an indemnity or other payment for native sod acreage, you will be required to repay the amount received and any premium for such acreage will be refunded to you.

(2) If we determine you have tilled less than five acres of native sod a year for more than one crop year, we will add all the native sod acreage tilled after May 22, 2008, and all such acreage will be ineligible for insurance for the first five crop years of planting following the date the cumulative native sod acreage tilled exceeds five acres.

6. Coverage, Coverage Levels, Protection Factor, and Policy Protection

(a) For all acreage of the insured crop in the county, you must select the same plan of insurance (*e.g.,* all Area Revenue Protection, all Area Revenue Protection with the Harvest Price Exclusion, or all Area Yield Protection), if such plans are available on the actuarial documents.

(b) You must choose a protection factor:

(1) From a range of percentages shown on the actuarial documents;

(2) As a whole percentage from amounts specified; and

(3) For each crop, type, and practice as shown on the Special Provisions (you may choose a different protection factor for each crop, type, and practice).

(c) You may select any coverage level shown on the actuarial documents for each crop, type, and practice as shown on the Special Provisions.

(1) For Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion:

(i) CAT level of coverage is not available; and

(ii) With respect to additional coverage, you may select any coverage level specified in the actuarial documents for each crop, type, and practice as shown on the Special Provisions. For example: You may choose a 75 percent coverage level for one crop, type, and practice (Such as corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (Corn non-irrigated practice).

(2) For Area Yield Protection:

(i) CAT level of coverage is available, and you may select the CAT level of coverage for

any crop, type, and practice as shown on the Special Provisions;

(ii) With respect to additional coverage, you may select any coverage level (Specified in the actuarial documents for each crop, type, and practice. For example: You may choose a 75 percent coverage level for one crop, type, and practice (corn irrigated practice) and a 90 percent coverage level for another crop, type, and practice (corn non-irrigated practice); and

(iii) You may have CAT coverage on one type, and practice shown on the actuarial document for the crop, and additional coverage on another type and practice for the same crop as long as they are different types or practices. You may also have different additional coverage levels by type, and practice as shown on the Special Provisions.

(d) You may change the plan of insurance, protection factor, or coverage level, for the following crop year by giving written notice to us not later than the sales closing date for the insured crop.

(e) Since this is a continuous policy and the expected county yield and projected price may change each year, if you do not select a new insurance plan, protection factor, and coverage level on or before the sales closing date, we will assign the same plan of insurance, protection factor, and coverage level as the previous year.

(f) Policy protection for ARPI plans of insurance is calculated as follows:

(1) Multiply dollar amount of insurance per acre for each crop, type, and practice as shown on the Special Provisions by the number of acres insured for such crop, type and practice; and

(2) Multiply the result of paragraph (1) by your share.

(g) If the projected price cannot be calculated for the current crop year under the provisions contained in the CEPP–ARPI and you previously chose Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion will not be provided and you will automatically be covered under the Area Yield Protection plan of insurance for the current crop year unless you cancel your coverage by the cancellation date or change your plan of insurance by the sales closing date;

(2) Notice of availability will be provided on RMA's Web site by the date specified in the applicable projected price definition contained in the CEPP–ARPI;

(3) The projected price will be determined by RMA and will be released by the date specified in the applicable projected price definition contained in the CEPP–ARPI; and

(4) Your coverage will automatically revert back to Area Revenue Protection or Area Revenue Protection with the Harvest Price Exclusion, whichever is applicable, for the next crop year that revenue protection is available unless you cancel your coverage by the cancellation date or change your coverage by the sales closing date.

7. Administrative Fees and Annual Premium

(a) The administrative fee:

(1) For CAT coverage will be an amount specified in the CAT Endorsement or the actuarial documents, as applicable;

(2) For additional levels of coverage is $30, or an amount specified in the actuarial documents, as applicable;

(3) Is payable to us on the premium billing date for the crop;

(4) Must be paid no later than the time premium is due or the amount will be considered a delinquent debt;

(5) In accordance with section 6(c)(2)(iii), will be charged for both CAT and additional coverage if a producer elects both levels for the crop in the county;

(6) For additional coverage, will only be charged once even if you choose two or more different additional levels of coverage for the different types and practices for the crop;

(7) Will not be more than one additional and one CAT administrative fee no matter how many different coverage levels you choose for different type and practice combinations as shown on the Special Provisions you insure for the crop in the county;

(8) Will be waived if you request it and:

(i) You qualify as a limited resource farmer; or

(ii) You were insured prior to the 2005 crop year or for the 2005 crop year and your administrative fee was waived for one or more of those crop years because you qualified as a limited resource farmer under a policy definition previously in effect, and you remain qualified as a limited resource farmer under the definition that was in effect at the time the administrative fee was waived;

(9) Will not be required if you file a bona fide zero acreage report on or before the acreage reporting date for the crop. If you falsely file a zero acreage report you may be subject to criminal, civil and administrative sanctions; and

(10) If not paid when due, may make you ineligible for crop insurance and certain other USDA benefits.

(b) The premium is based on the policy protection calculated in section 6(f).

(c) The information needed to determine the premium rate and any premium adjustment percentages that may apply are contained in the actuarial documents.

(d) To calculate the premium and subsidy amounts for ARPI plans of insurance:

(1) Multiply your policy protection from section 6(f) by the applicable premium rate and any premium adjustment percentages that may apply;

(2) Multiply the result of paragraph (1) by the applicable subsidy factor (This is the amount of premium FCIC will pay);

(3) Subtract the result of paragraph (2) from the result of paragraph (1) to calculate the amount of premium you will pay.

(e) The amount of premium calculated in accordance with section 7(d)(3) is earned and payable at the time the insured crop is properly planted by the final planting date and reported on the acreage reporting date. You will be billed for such premium and applicable administrative fees not earlier than the premium billing date specified in the Special Provisions.

(f) If the amount of premium calculated in accordance with section 7(d)(3) and administrative fees you are required to pay for any acreage exceeds the amount of policy protection for the acreage, coverage for those acres will not be provided (No premium or administrative fee will be due and no indemnity will be paid for such acreage).

(g) Premium or administrative fees owed by you will be offset from an indemnity due you in accordance with section 2(j).

8. Report of Acreage and Report of Production

(a) An annual acreage report must be submitted to us on our form for each insured crop (Separate lines for each type and practice) in the county on or before the acreage reporting date contained in the Special Provisions.

(b) If you do not have a share in an insured crop in the county for the crop year, you must submit an acreage report, on or before the acreage reporting date, so indicating.

(c) Your acreage report must include the following information, if applicable:

(1) The amount of acreage of the crop in the county (insurable and not insurable) in which you have a share;

(2) Your share at the time coverage begins;

(3) The practice;

(4) The type; and

(5) The land identifier for the crop acreage (e.*g.,* legal description, FSA farm serial number or common land unit number if provided to you by FSA, *etc.*) as required on our form.

(d) We will not insure any acreage of the insured crop planted after the final planting date.

(e) Regarding the ability to revise an acreage report you have submitted to us:

(1) You cannot revise any information pertaining to the planted acreage after the acreage reporting date without our consent;

(2) Consent may only be provided when no cause of loss has occurred and we have made a determination that the crop in the county will likely produce at least 90 percent of the expected county yield; and

(3) The provisions in section 8(e)(1) and (2) also pertain to land acquired after the acreage reporting date, and we may choose to insure or not insure the acreage, provided the crop meets the requirements in section 5 and section 8. This does not apply to any acreage for which insurance attached under a different person's policy.

(f) We may elect to determine all premiums and indemnities based on the information you submit on the acreage report or upon the factual circumstances we determine to have existed, subject to the provisions contained in section 8.

(g) You must provide all required reports and you are responsible for the accuracy of all information contained in those reports. You should verify the information on all such reports prior to submitting them to us.

(1) Except as provided in section 8(g)(2), if you submit information on any report that is different than what is determined to be correct and the information reported on the acreage report results in:

(i) A lower liability than the actual, correct liability determined, the production guarantee or amount of insurance on the unit will be reduced to an amount consistent with

the information reported on the acreage report; or

(ii) A higher liability than the actual, correct liability determined, the information contained in the acreage report will be revised to be consistent with the correct information.

(2) If your share is misreported and the share is:

(i) Under-reported at the time of the acreage report, any claim will be determined using the share you reported; or

(ii) Over-reported at the time of the acreage report, any claim will be determined using the share we determine to be correct.

(h) If we discover you have incorrectly reported any information on the acreage report for any crop year, you may be required to provide documentation in subsequent crop years substantiating your report of acreage for those crop years, including, but not limited to, an acreage measurement service at your own expense. If the correction of any misreported information would affect an indemnity that was paid in a prior crop year, such claim will be adjusted and you will be required to repay any overpaid amounts.

(i) You may request an acreage measurement from FSA or a business that provides such measurement service prior to the acreage reporting date, submit documentation of such request and an acreage report with estimated acreage by the acreage reporting date, and if the acreage measurement shows the estimated acreage was incorrect, we will revise your acreage report to reflect the correct acreage:

(1) If an acreage measurement is only requested for a portion of the insured crop, type, and practice as shown on the Special Provisions, you must separately designate the acreage for which an acreage measurement has been requested;

(2) Premium will still be due in accordance with sections 2(j) and 7 (If the acreage is not measured as specified in section 8(i) and the acreage measurement is not provided to us at least 15 days prior to the premium billing date, your premium will be based on the estimated acreage and will be revised, if necessary, when the acreage measurement is provided);

(3) If an acreage measurement is not provided to us by the time the final county revenue or final county yield, as applicable, is calculated, we may:

(i) Elect to measure the acreage, and finalize your claim in accordance with applicable policy provisions;

(ii) Defer finalization of the claim until the measurement is completed with the understanding that if you fail to provide the measurement prior to the termination date, your claim will not be paid; or

(iii) Finalize the claim in accordance with applicable policy provisions after you provide the acreage measurement to us; or

(4) If the acreage measurement is not provided by the termination date, you will be precluded from providing any estimated acreage for all subsequent crop years;

(5) If there is an irreconcilable difference between:

(i) The acreage measured by FSA or a measuring service and our on farm measurement, our on-farm measurement will be used; or

(ii) The acreage measured by a measuring service, other than our on-farm measurement, and FSA, the FSA measurement will be used; and

(6) If the acreage report has been revised in accordance with sections 8(f) and 8(i), the information on the initial acreage report will not be considered misreported for the purposes of section 8(g).

(j) If you do not submit an acreage report by the acreage reporting date, or if you fail to report all acreage, we may elect to determine the insurable acreage, by crop, type, practice as shown on the Special Provisions, and share, or to deny liability on such acreage. If we deny liability for the unreported acreage, no premium will be due on such acreage and no indemnity will be paid.

(k) An annual production report must be submitted to us on our form for each insured crop (Separate lines for each type and practice as shown on the Special Provisions) in the county on the date specified in the Special Provisions.

(l) If you do not submit a production report to us by the date specified in the Special Provisions, the yield used to determine the final county yield for your policy will be equal to the expected county yield. In addition, you will not be eligible for any indemnity paid for any loss, either yield or price, under this policy.

(m) Errors in reporting acreage and yield may be corrected by us at the time we become aware of such errors. However, the provisions regarding incorrect information in this section will apply.

9. Share Insured

(a) Insurance will attach:

(1) Only if the person completing the application has a share in the insured crop; and

(2) Only to that person's share, except that insurance may attach to another person's share of the insured crop if the other person has a share of the crop and:

(i) The application clearly states the insurance is requested for a person other than an individual (*e.g.,* a partnership or a joint venture); or

(ii) The application clearly states you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share. If you as a landlord will insure your tenant's share, or you as a tenant will insure your landlord's share, you must provide evidence of the other party's approval (lease, power of attorney, *etc.*) and such evidence will be retained by us:

(A) You also must clearly set forth the percentage shares of each person on the acreage report; and

(B) For each landlord or tenant, you must report the landlord's or tenant's social security number, employer identification number, or other identification number we assigned for the purposes of this policy, as applicable.

(b) With respect to your share:

(1) We will consider included in your share under your policy, any acreage or interest reported by or for:

(i) Your spouse, unless such spouse can prove he/she has a separate farming operation, which includes, but is not limited to, separate land (transfers of acreage from one spouse to another is not considered separate land), separate capital, separate inputs, separate accounting, and separate maintenance of proceeds; or

(ii) Your child who resides in your household or any other member of your household, unless such child or other member of the household can demonstrate such person has a separate share in the crop (Children who do not reside in your household are not included in your share); and

(2) If it is determined that the spouse, child or other member of the household has a separate policy but does not have a separate farming operation or share of the crop, as applicable:

(i) The policy for the spouse or child or other member of the household will be void and the policy remaining in effect will be determined in accordance with section 18(a)(1) and (2);

(ii) The acreage or share reported under the policy that is voided will be included under the remaining policy; and

(iii) No premium will be due and no indemnity will be paid for the voided policy.

(c) Acreage rented for a percentage of the crop, or a lease containing provisions for *BOTH* a minimum payment (such as a specified amount of cash, bushels, pounds, *etc.,*) *AND* a crop share will be considered a crop share lease.

(d) Acreage rented for cash, or a lease containing provisions for *EITHER* a minimum payment *OR* a crop share (such as a 50/50 share or $100.00 per acre, whichever is greater) will be considered a cash lease.

10. Insurance Period

Unless specified otherwise in the Crop Provisions, coverage begins at the later of:

(a) The date we accept your application (For the purposes of this paragraph, the date of acceptance is the date that you submit a properly executed application in accordance with section 2); or

(b) The date the insured crop is planted.

11. Causes of Loss

(a) ARPI provides protection against widespread loss of revenue or yield in a county caused by natural occurrences.

(b) Failure to follow good farming practices or planting or producing a crop using a practice that has not been widely recognized as used to establish the expected count yield is not an insurable cause of loss under ARPI.

12. Triggers, Final Policy Protection, Payment Factor, and Indemnity Calculations

(a) Individual farm revenues and yields are not considered when calculating losses under ARPI. It is possible that your individual farm may experience reduced revenue or reduced yield and you do not receive an indemnity under ARPI.

(b) To calculate the trigger revenue;

(1) For Area Revenue Protection, multiply the expected county yield by the greater of the projected or harvest price and by the coverage level.

(2) For Area Revenue Protection with the Harvest Price Exclusion, multiply the expected county yield by the projected price and by the coverage level.

(c) To calculate the Trigger Yield for Area Yield Protection, multiply the expected county yield by the coverage level.

(d) If the harvest price cannot be calculated for the current crop year under the provisions contained in the CEPP–ARPI:

(1) Revenue protection will continue to be available; and

(2) The harvest price will be determined and announced by FCIC.

(e) The final policy protection for:

(1) Area Revenue Protection is calculated by:

(i) Multiplying the expected county yield by the greater of the harvest price or the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(2) Area Revenue Protection with the Harvest Price Exclusion and Area Yield Protection is equal to the policy protection and is calculated by:

(i) Multiplying the expected county yield by the projected price;

(ii) Multiplying the result of subparagraph (i) by your protection factor; and

(iii) Multiplying the result of subparagraph (ii) by your acres and by your share.

(f) An indemnity is due for:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion if the final county revenue is less than the trigger revenue.

(2) Area Yield Protection if the final county yield is less than the trigger yield.

(g) The payment factor is calculated for:

(1) Area Revenue Protection and Area Revenue Protection with the Harvest Price Exclusion by:

(i) Subtracting the final county revenue from the trigger revenue to determine the amount of loss;

(ii) Subtracting the total loss factor from 1.00 to calculate the amount of production not lost in the county;

(iii) Multiplying the result of subparagraph (ii) by the expected county revenue;

(iv) Subtract the result of subparagraph (iii) from the trigger revenue; and

(v) Dividing the result of subparagraph (i) by the result of subparagraph (iv) to obtain the payment factor.

(2) Area Yield Protection by:

(i) Subtracting the final county yield from the trigger yield to determine the amount of loss;

(ii) Subtracting the total loss factor from 1.00 to calculate the amount of production not lost in the county;

(iii) Multiplying the result of subparagraph (ii) by the expected county yield;

(iv) Subtract the result of subparagraph (iii) from the trigger yield; and

(v) Dividing the result of subparagraph (i) by the result of subparagraph (iv) to obtain the payment factor.

(h) Indemnities for all three ARPI plans of insurance are calculated by multiplying the final policy protection by the payment factor.

(i) Indemnities for all three ARPI plans of insurance are calculated following release of the final county yield and harvest price as specified in the Crop Provisions.

13. Indemnity and Premium Limitations

(a) With respect to acreage where you are due an indemnity for your first insured crop in the crop year, except in the case of double cropping described in section 13(c):

(1) You may elect to not plant or to plant and not insure a second crop on the same acreage for harvest in the same crop year and collect an indemnity payment that is equal to 100 percent of the insurable loss for the first insured crop; or

(2) You may elect to plant and insure a second crop on the same acreage for harvest in the same crop year (you will pay the full premium and if there is an insurable loss to the second crop, receive the full amount of indemnity that may be due for the second crop, regardless of whether there is a subsequent crop planted on the same acreage) and:

(i) Collect an indemnity payment that is 35 percent of the insurable loss for the first insured crop;

(ii) Be responsible for a premium that is 35 percent of the premium that you would otherwise owe for the first insured crop; and

(iii) If the second crop does not suffer an insurable loss:

(A) Collect an indemnity payment for the other 65 percent of insurable loss that was not previously paid under section 13(a)(2)(i); and

(B) Be responsible for the remainder of the premium for the first insured crop that you did not pay under section 13(a)(2)(ii).

(b) In lieu of the priority contained in the Agreement to Insure section, which states that the Crop Provisions have priority over the Basic Provisions, the reduction in the amount of indemnity and premium specified in section 13(a) of these Basic Provisions, as applicable, will apply to any premium owed or indemnity paid in accordance with the Crop Provisions, and any applicable endorsement. This will apply:

(1) Even if another person plants the second crop on any acreage where the first insured crop was planted; or

(2) If you fail to provide any records we require to determine whether an insurable loss occurred for the second crop.

(c) You may receive a full indemnity for a first insured crop when a second crop is planted on the same acreage in the same crop year, regardless of whether or not the second crop is insured or sustains an insurable loss, if each of the following conditions are met:

(1) It is a practice that is generally recognized by agricultural experts or organic agricultural experts for the area to plant two or more crops for harvest in the same crop year;

(2) The second or more crops are customarily planted after the first insured crop for harvest on the same acreage in the same crop year in the area;

(3) Additional coverage insurance offered under the authority of the Act is available in the county on the two or more crops that are double cropped; and

(4) You provide records acceptable to us of acreage and production that show you have double cropped acreage in at least two of the last four crop years in which the first insured crop was planted, or that show the applicable acreage was double cropped in at least two of the last four crop years in which the first insured crop was grown on it.

(d) The receipt of a full indemnity on both crops that are double cropped is limited to the number of acres for which you can demonstrate you have double cropped or that have been historically double cropped as specified in section 13(c).

(1) If the records you provided are from acreage you double cropped in at least two of the last four crop years, you may apply your history of double cropping to any acreage of the insured crop in the county (*e.g.,* if you have double cropped 100 acres of wheat and soybeans in the county and you acquire an additional 100 acres in the county, you can apply that history of double cropped acreage to any of the 200 acres in the county as long as it does not exceed 100 acres); or

(2) If the records you provided are from acreage that another producer double cropped in at least two of the last four crop years you may only use the history of double cropping for the same physical acres from which double cropping records were provided (e.*g.,* if a neighbor has double cropped 100 acres of wheat and soybeans in the county and you acquire your neighbor's 100 double cropped acres and an additional 100 acres in the county, you can only apply your neighbor's history of double cropped acreage to the same 100 acres that your neighbor double cropped).

(e) If any Federal or State agency requires destruction of any insured crop or crop production, as applicable, because it contains levels of a substance, or has a condition, that is injurious to human or animal health in excess of the maximum amounts allowed by the Food and Drug Administration, other public health organizations of the United States or an agency of the applicable State, you must destroy the insured crop or crop production, as applicable, and certify that such insured crop or crop production has been destroyed prior to receiving an indemnity payment. Failure to destroy the insured crop or crop production, as applicable, will result in you having to repay any indemnity paid and you may be subject to administrative sanctions in accordance with section 515(h) of the Act and 7 CFR part 400, subpart R, and any applicable civil or criminal sanctions.

14. Organic Farming Practices

(a) Insurance will be provided for a crop grown using an organic farming practice for only those acres of the crop that meet the requirements for an organic crop on the acreage reporting date.

(b) If an organic type or practice is shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, *etc.,* for such organic crop, type and practice will be used unless otherwise specified in the actuarial documents. If an organic type or practice is not shown on the actuarial documents, the projected price, dollar amount of insurance, policy protection, premium rate, *etc.,* for the non-organic crop, type and practice will be used.

(c) If insurance is provided for an organic farming practice as specified in section 14(a) and (b), only the following acreage will be insured under such practice:

(1) Certified organic acreage;

(2) Transitional acreage being converted to certified organic acreage in accordance with an organic plan; and

(3) Buffer zone acreage.

(d) On the date you report your acreage, you must have:

(1) For certified organic acreage, a written certification in effect from a certifying agent indicating the name of the entity certified, effective date of certification, certificate number, types of commodities certified, and name and address of the certifying agent (A certificate issued to a tenant may be used to qualify a landlord or other similar arrangement);

(2) For transitional acreage, a certificate as described in section 14(d)(1), or written documentation from a certifying agent indicating an organic plan is in effect for the acreage; and

(3) Records from the certifying agent showing the specific location of each field of certified organic, transitional, buffer zone, and acreage not maintained under organic management.

(e) Acreage that qualifies as certified organic or transitional acreage on the acreage reporting date will be identified separately on the acreage report.

15. Yields

(a) Yields used under this insurance program for a crop, will be based on:

(i) Data collected by NASS, if elected by FCIC for all counties for the crop nationwide, (regardless of whether such data is published or unpublished); or

(ii) Crop insurance data, other USDA data, or other data sources, if elected by FCIC for all counties for the crop nationwide, as specified in the actuarial documents prior to the contract change date.

(b) Not withstanding any other provision in this section, for a specific county in any given crop year, if FCIC determines the data elected to be used by FCIC under subsection (a) is not available or credible, FCIC may elect to establish the expected county yield and final county yields based on data obtained from NASS, crop insurance, other USDA, or other data sources as determined by FCIC and such data source will be specified in the actuarial documents.

(c) Except as otherwise provided in this section, the data source, type and practice used to establish the expected county yield will be used to establish the final county yield.

(d) If the data source used to establish the expected county yield is not available or credible to allow it to be used to establish the final county yield, FCIC will determine the final county yield based on the most accurate data available from crop insurance, USDA, or other data sources as determined by FCIC.

(e) To the extent that practices used during the crop year change from those upon which the expected county yield is based, the final county yield may be adjusted to reflect the yield that would have resulted but for the change in practice. For example, if the county is traditionally 90 percent irrigated and 10 percent non-irrigated, but this year the county is now 50 percent irrigated and 50 percent non-irrigated, the final county yield will be adjusted to an amount as if the county had 90 percent irrigated acreage.

(f) If yields are based on NASS data, the final county yield will be the most current NASS yield at the time FCIC determines the yield in accordance with the payment dates section of the applicable Crop Provisions.

(g) The final county yield determined by FCIC is considered final for the purposes of establishing whether an indemnity is due and will not be revised for any reason.

(h) If there is not credible data available from any source, as determined at the sole discretion of FCIC, to establish the final county yield in accordance with this section, no coverage for the crop year will be provided and your premium will be refunded.

16. Assignment of Indemnity

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lien holder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lien holder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lien holder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lien holders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all notices and forms as required by the policy.

17. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance.

(a) We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred.

(b) The transfer of coverage rights must be on our form and will not be effective until approved by us in writing.

(c) Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees.

(d) The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

18. Other Insurance

(a) Nothing in this section prevents you from obtaining other insurance not authorized under the Act. However, unless specifically required by policy provisions, you must not obtain any other crop insurance authorized under the Act on your share of the insured crop.

(b) If you cannot demonstrate that you did not intend to have more than one policy in effect, you may be subject to the consequences authorized under this policy, the Act, or any other applicable statute.

(c) If you can demonstrate that you did not intend to have more than one policy in effect (For example, an application to transfer your policy or written notification to an insurance provider that states you want to purchase, or transfer, insurance and you want any other policies for the crop canceled would demonstrate you did not intend to have duplicate policies) and:

(1) One is an additional level of coverage policy and the other is a CAT level of coverage policy:

(i) The additional level of coverage policy will apply if both policies are with the same insurance provider or, if not, both insurance providers agree; or

(ii) The policy with the earliest date of application will be in force if both insurance providers do not agree; or

(2) Both are additional level of coverage policies or both are CAT level of coverage policies, the policy with the earliest date of application will be in force and the other policy will be void, unless both policies are with:

(i) The same insurance provider and the insurance provider agrees otherwise; or

(ii) Different insurance providers and both insurance providers agree otherwise.

19. Crops as Payment

You must not abandon any crop to us. We will not accept any crop as compensation for payments due us.

20. Notices

(a) All notices required to be given by you must be in writing and received by your crop insurance agent within the designated time unless otherwise provided by the notice requirement.

(1) Notices required to be given immediately may be by telephone or in person and confirmed in writing.

(2) Time the notice is provided will be determined by the time of our receipt of the written notice.

(3) If the date by which you are required to submit a report or notice falls on Saturday, Sunday, or a Federal holiday, or if your agent's office is, for any reason, not open for business on the date you are required to submit such notice or report, such notice or report must be submitted on the next business day.

(b) All notices and communications required to be sent by us to you will be mailed to the address contained in your records located with your crop insurance agent.

(1) Notice sent to such address will be conclusively presumed to have been received by you.

(2) You should advise us immediately of any change of address.

21. Access to Insured Crop and Records, and Record Retention

(a) We, and any employee of USDA authorized to investigate or review any matter relating to crop insurance, have the right to examine the insured crop and all records related to the insured crop and this policy, and any mediation, arbitration or litigation involving the insured crop as often as reasonably required during the record retention period.

(b) You must retain, and provide upon our request, or the request of any employee of USDA authorized to investigate or review any matter relating to crop insurance, complete records pertaining to the planting, acres, share, replanting, inputs, production, harvesting and disposition of the insured crop for a period of three years after the end of the crop year or three years after the date of final payment of indemnity, whichever is later. This requirement also applies to all such records for acreage that is not insured.

(c) We, or any employee of USDA authorized to investigate or review any matter relating to crop insurance, may extend the record retention period beyond three years by notifying you of such extension in writing.

(d) By signing the application for insurance authorized under the Act or by continuing insurance for which you have previously applied, you authorize us or USDA, or any person acting for us or USDA authorized to investigate or review any matter relating to crop insurance, to obtain records relating to the planting, acres, share, replanting, inputs, production, harvesting, and disposition of the insured crop from any person who may have custody of such records, including but not limited to, FSA offices, banks, warehouses, gins, cooperatives, marketing associations, and accountants. You must assist in obtaining all records we or any employee of USDA authorized to investigate or review any matter relating to crop insurance request from third parties.

(e) Failure to provide access to the insured crop or the farm, maintain or provide any required records, authorize access to the records maintained by third parties, or assist in obtaining all such records will result in a determination that no indemnity is due for those acres in which the records are not provided.

22. Amounts Due Us

(a) Interest will accrue at the rate of 1.25 percent simple interest per calendar month, or any portion thereof, on any unpaid amount owed to us or on any unpaid administrative fees owed to FCIC.

(1) For the purpose of premium amounts owed to us or administrative fees owed to FCIC, interest will start to accrue on the first day of the month following the premium billing date specified in the Special Provisions.

(2) We will collect any unpaid amounts owed to us and any interest owed thereon and, prior to the termination date, we will collect any administrative fees and interest owed thereon to FCIC. After the termination date, FCIC will collect any unpaid administrative fees and any interest owed thereon for any catastrophic risk protection policy and we will collect any unpaid administrative fees and any interest owed thereon for additional coverage policies.

(b) For the purpose of any other amounts due us, such as repayment of indemnities found not to have been earned, interest will start to accrue on the date that notice is issued to you for the collection of the unearned amount.

(1) Amounts found due under this paragraph will not be charged interest if payment is made within 30 days of issuance of the notice by us.

(2) The amount will be considered delinquent if not paid within 30 days of the date the notice is issued by us.

(c) All amounts paid will be applied first to expenses of collection (See subsection (d) of this section) if any, second to the reduction of accrued interest, and then to the reduction of the principal balance.

(d) If we determine that it is necessary to contract with a collection agency or to employ an attorney to assist in collection, you agree to pay all of the expenses of collection.

(e) The portion of the amounts owed by you for a policy authorized under the Act that are owed to FCIC may be collected in part through administrative offset from payments you receive from United States government agencies in accordance with 31 U.S.C. chapter 37. Such amounts include all administrative fees, and the share of the overpaid indemnities and premiums retained by FCIC plus any interest owed thereon.

23. Mediation, Arbitration, Appeal, Reconsideration, and Administrative and Judicial Review

(a) All expected county yields and final county yields are calculated by FCIC in accordance with section 15. However, calculations of expected county yields and final county yields are matters of general applicability. Any matter of general applicability is not subject to appeal under 7 CFR part 400, subpart J or 7 CFR part 11. Your only remedy is judicial review but if you want to seek judicial review of any FCIC determination that is a matter of general applicability, you must request a determination of non-appealability from the Director of the National Appeals Division in accordance with 7 CFR 11.6 before seeking judicial review.

(b) The time frame to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the yields are published on the RMA Web site.

(c) With respect to good farming practices:

(1) We will make preliminary decisions regarding what constitutes a good farming practice.

(2) If you disagree with our decision of what constitutes a good farming practice, you must request a determination from FCIC of what constitutes a good farming practice.

(3) If you do not agree with any determination made by FCIC regarding what constitutes a good farming practice:

(i) You may request reconsideration by FCIC of this determination in accordance with the reconsideration process established for this purpose and published at 7 CFR part 400, subpart J; or

(ii) You may file suit against FCIC as follows:

(A) You are not required to request reconsideration from FCIC before filing suit;

(B) Any suit must be brought against FCIC in the United States district court for the district in which the insured acreage is located; and

(C) Suit must be filed against FCIC not later than one year after the date:

(1) Of the determination made by FCIC regarding what constitutes a good farming practice; or

(2) Reconsideration is completed, if reconsideration was requested under section 23(c)(2)(i).

(d) If you elect to bring suit against FCIC after seeking a Director's Review in accordance with section 23(a), such suit must be filed against FCIC in the United States district court for the district in which the insured acreage is located not later than one year after the date of the decision rendered by the Director. Under no circumstances can you recover any punitive, compensatory or any other damages from FCIC.

(e) With respect to any other determination under this policy:

(1) If you and we fail to agree on any determination not covered by sections 23(a) and (c), the disagreement may be resolved through mediation. To resolve any dispute through mediation, you and we must both:

(i) Agree to mediate the dispute;

(ii) Agree on a mediator; and

(iii) Be present or have a designated representative who has authority to settle the case present, at the mediation.

(2) If resolution cannot be reached through mediation, or you and we do not agree to mediation, the disagreement must be resolved through arbitration in accordance with the rules of the American Arbitration Association (AAA), unless otherwise stated in this subsection or rules are established by FCIC for this purpose. Any mediator or arbitrator with a familial, financial or other business relationship to you or us, or our agent or loss adjuster, is disqualified from hearing the dispute.

(3) If the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, either you or we must obtain an interpretation from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC.

(i) Any interpretation by FCIC will be binding in any mediation or arbitration.

(ii) Failure to obtain any required interpretation from FCIC will result in the nullification of any agreement or award.

(iii) An interpretation by FCIC of a policy provision is considered a determination that is a matter of general applicability. However, before such interpretation may be challenged in the courts, you must to request a determination of non-appealability from the Director of the National Appeals Division is not later than 30 days after the date the interpretation was published on the RMA Web site.

(4) Unless the dispute is resolved through mediation, the arbitrator must provide to you and us a written statement describing the issues in dispute, the factual findings, the determinations and the amount and basis for any award and breakdown by claim for any award.

(i) The statement must also include any amounts awarded for interest.

(ii) Failure of the arbitrator to provide such written statement will result in the nullification of all determinations of the arbitrator.

(iii) All agreements reached through settlement, including those resulting from mediation, must be in writing and contain at a minimum a statement of the issues in dispute and the amount of the settlement.

(5) Regardless of whether mediation is elected:

(i) The initiation of arbitration proceedings must occur within one year of the date we denied your claim or rendered the determination with which you disagree, whichever is later;

(ii) If you fail to initiate arbitration in accordance with section 23(e)(5)(i) and complete the process, you will not be able to resolve the dispute through judicial review;

(iii) If arbitration has been initiated in accordance with section 23(e)(5)(i) and completed, and judicial review is sought, suit must be filed not later than one year after the date the arbitration decision was rendered; and

(iv) In any suit, if the dispute in any way involves a policy or procedure interpretation, regarding whether a specific policy provision or procedure is applicable to the situation, how it is applicable, or the meaning of any policy provision or procedure, an interpretation must be obtained from FCIC in accordance with 7 CFR part 400, subpart X or such other procedures as established by FCIC. Such interpretation will be binding on all parties.

(6) Any decision rendered in arbitration is binding on you and us unless judicial review is sought in accordance with section 23(e)(5)(iii). Notwithstanding any provision in the rules of the AAA, you and we have the right to judicial review of any decision rendered in arbitration.

(f) In any mediation, arbitration, appeal, administrative review, reconsideration or judicial process, the terms of this policy, the Act, and the regulations published at 7 CFR chapter IV, including the provisions of 7 CFR part 400, subpart P, are binding. Conflicts between this policy and any state or local laws will be resolved in accordance with section 27. If there are conflicts between any rules of the AAA and the provisions of your policy, the provisions of your policy will control.

(g) Except as provided in section 23(h), no award or settlement in mediation, arbitration, appeal, administrative review or reconsideration process or judicial review can exceed the amount of liability established or which should have been established under the policy, except for interest awarded in accordance with section 24.

(h) In a judicial review only, you may recover attorneys' fees or other expenses, or any punitive, compensatory or any other damages from us only if you obtain a determination from FCIC that we, our agent or loss adjuster failed to comply with the terms of this policy or procedures issued by FCIC and such failure resulted in you receiving a payment in an amount that is less than the amount to which you were entitled. Requests for such a determination should be addressed to the following: USDA/RMA/Deputy Administrator for Compliance/Stop 0806, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0806.

24. Interest Limitations

We will pay simple interest computed on the net indemnity ultimately found to be due by us or by a final judgment of a court of competent jurisdiction, from and including the 61st day after the final county yield or final county revenue release date as specified on the applicable crop provision.

(a) Interest will be paid only if the reason for our failure to timely pay is NOT due to your failure to provide information or other material necessary for the computation or payment of the indemnity.

(b) The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) and published in the **Federal Register** semiannually on or about January 1 and July 1 of each year, and may vary with each publication.

25. Descriptive Headings

The descriptive headings of the various policy provisions are formulated for convenience only and are not intended to affect the construction or meaning of any of the policy provisions.

26. Conformity to Food Security Act

Although your violation of a number of Federal statutes, including the Act, may cause cancellation, termination, or voidance of your insurance contract, you should be specifically aware that your policy will be canceled if you are determined to be ineligible to receive benefits under the Act due to violation of the controlled substance provisions (title XVII) of the Food Security Act of 1985 (Pub. L. 99–198) and the regulations promulgated under the Act by USDA.

(a) Your insurance policy will be canceled if you are determined, by the appropriate Agency, to be in violation of these provisions.

(b) We will recover any and all monies paid to you or received by you during your period of ineligibility, and your premium will be refunded, less an amount for expenses and handling equal to 20 percent of the premium paid or to be paid by you.

27. Applicability of State and Local Statutes

If the provisions of this policy conflict with statutes of the State or locality in which this policy is issued, the policy provisions will prevail. State and local laws and regulations in conflict with Federal statutes, this policy, and the applicable regulations do not apply to this policy.

28. Concealment, Misrepresentation, or Fraud

(a) If you have falsely or fraudulently concealed the fact that you are ineligible to receive benefits under the Act or if you or anyone assisting you has intentionally concealed or misrepresented any material fact relating to this policy:

(1) This policy will be voided; and

(2) You may be subject to remedial sanctions in accordance with 7 CFR part 400, subpart R.

(b) Even though the policy is void, you will still be required to pay 20 percent of the premium that you would otherwise be required to pay to offset costs incurred by us in the service of this policy. If previously paid, the balance of the premium will be returned.

(c) Voidance of this policy will result in you having to reimburse all indemnities paid for the crop year in which the voidance was effective.

(d) Voidance will be effective on the first day of the insurance period for the crop year in which the act occurred and will not affect the policy for subsequent crop years unless a violation of this section also occurred in such crop years.

(e) If you willfully and intentionally provide false or inaccurate information to us or FCIC or you fail to comply with a requirement of FCIC, in accordance with 7 CFR part 400, subpart R, FCIC may impose on you:

(1) A civil fine for each violation in an amount not to exceed the greater of:

(i) The amount of the pecuniary gain obtained as a result of the false or inaccurate information provided or the noncompliance with a requirement of this title; or

(ii) $10,000; and

(2) A disqualification for a period of up to 5 years from receiving any monetary or nonmonetary benefit provided under each of the following:

(i) Any crop insurance policy offered under the Act;

(ii) The Farm Security and Rural Investment Act of 2002 (7 U.S.C. 7333 *et seq.*);

(iii) The Agricultural Act of 1949 (7 U.S.C. 1421 *et seq.*);

(iv) The Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*);

(v) The Agricultural Adjustment Act of 1938 (7 U.S.C. 1281 *et seq.*);

(vi) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*);

(vii) The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 *et seq.*); and

(viii) Any Federal law that provides assistance to a producer of an agricultural commodity affected by a crop loss or a decline in the prices of agricultural commodities.

29. Multiple Benefits

(a) If you are eligible to receive an indemnity under an additional coverage plan of insurance and are also eligible to receive benefits for the same loss under any other USDA program, you may receive benefits under both programs, unless specifically limited by the crop insurance contract or by law.

(b) Any amount received for the same loss from any USDA program, in addition to the crop insurance payment, will not exceed the difference between the crop insurance payment and the amount of the loss, unless

otherwise provided by law. The amount of loss is the difference between the total value of the insured crop before the loss and the total value of the insured crop after the loss.

(c) FSA or another USDA agency, as applicable, will determine and pay the additional amount due you for any applicable USDA program, after first considering the amount of any crop insurance indemnity.

30. Examples

The following are examples of the calculation of the premium, amount of insurance and indemnity for each of the three plans of insurance under ARPI. Your information will likely be different and you should consult the actuarial documents in your county and the policy information. The following facts are for illustration purposes only and apply to each of the examples.

Farmer A farms 100 acres in county X and has a 100 percent share, or 1.000, in those acres. From the actuarial documents in county X, Farmer A elects the 75 percent coverage level and a protection factor of 1.10. The actuarial documents in county X also show that the expected county yield is 141.4 bushels per acre, the projected price is $4.00, and the expected county revenue is $565.60. The subsidy factor for the 75 percent coverage level is .55 for revenue coverage and .59 for yield coverage. The total loss factor for county X is 82 percent or .82. At the end of the insurance period, for county X, FCIC releases a harvest price of $4.57 and a final county yield for county X of 75.0 bushels.

The premium rate is based on the published volatility factor and for this example is .0166 for Area Revenue Protection, .0146 for Area Revenue Protection with Harvest Price Exclusion, and .0116 for Area Yield Protection.

Area Revenue Protection Example

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor = dollar amount of insurance:

141.4 bushels × $4.00 × 1.1 = $622.16 dollar amount of insurance per acre

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share = policy protection:

$622.16 × 100.0 × 1.000 = $62,216 policy protection.

Step 3: Calculate the Total Premium

Formula: Policy protection times premium rate = total premium:

$62,216 × .0166 = $1,033 total premium.

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor = subsidy:

$1,033 × .55 = $568 subsidy.

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy = producer premium:

$1,033 − $568 = $465 producer premium.

Step 6: Calculate the Final Policy Protection

Formula: Expected county yield times harvest price times protection factor times acres times share = Final Policy Protection:

141.4 bushels × $4.57 × 1.10 × 100.0 × 1.000 = $71,082 final policy protection.

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price = final county revenue:

75.0 bushels × $4.57 = $342.75 final county revenue.

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times (greater of projected price or harvest price) times coverage level = trigger revenue:

141.4 bushels × $4.57 × .75 = $484.65 trigger revenue.

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county revenue times (1 minus total loss factor))) = payment factor:

($484.65 − $342.75) ÷ ($484.65 − ($565.60 × (1 − .82))) = .371 payment factor.

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor = indemnity:

$71,082 × .371 = $26,371 indemnity.

Area Revenue Protection with Harvest Price Exclusion Example

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor = dollar amount of insurance:

141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre.

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share = policy protection:

$622.16 × 100.0 × 1.000 = $62,216 policy protection.

Step 3: Calculate the Total Premium:

Formula: Policy protection times rate = total premium:

$62,216 × .0146 rate = $908 total premium.

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor = subsidy:

$908 times .55 = $499 subsidy.

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy = producer premium:

$908 − $499 = $409 producer premium.

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2:

$62,216 policy protection.

Step 7: Calculate the Final County Revenue

Formula: Final county yield times harvest price = final county revenue:

75.0 bushels × $4.57 = $342.75 final county revenue.

Step 8: Calculate the Trigger Revenue

Formula: Expected county yield times projected price times coverage level = trigger revenue:

141.4 bushels × $4.00 × .75 = $424.20 trigger revenue.

Step 9: Calculate the Payment Factor

Formula: (Trigger revenue minus final county revenue) divided by (trigger revenue minus (expected county revenue times (1 minus total loss factor))) = payment factor:

($424.20 − $342.75) ÷ ($424.20 − ($565.60 × (1 − .82))) = .253.

Step 10: Calculate the Indemnity

Formula: Final policy protection times payment factor = indemnity:

$62,216 × .253 = $15741 indemnity.

Area Yield Protection Example

Step 1: Calculate the Dollar Amount of Insurance per Acre

Formula: Expected county yield times projected price times protection factor = dollar amount of insurance:

141.4 bushels × $4.00 × 1.10 = $622.16 dollar amount of insurance per acre.

Step 2: Calculate the Policy Protection

Formula: Dollar amount of insurance per acre times acres times share = policy protection:

$622.16 × 100.0 × 1.000 = $62,216 policy protection.

Step 3: Calculate the Total Premium

Formula: policy protection times premium rate = total premium:

$62,216 × .0116 rate = $722 total premium.

Step 4: Calculate the Subsidy amount

Formula: Total premium times subsidy factor = subsidy:

$722 × .59 subsidy factor = $426 subsidy.

Step 5: Calculate the Producer Premium

Formula: Total premium minus subsidy = producer premium:

$722 − $426 = $296 producer premium.

Step 6: Calculate the Final Policy Protection

Use the policy protection amount calculated at the beginning of the insurance period in Step 2:

$62,216 policy protection.

Step 7: Calculate the Trigger Yield

Formula: Expected county yield times coverage level = trigger yield:

141.4 bushels times .75 = 106.1 bushels.

Step 8: Calculate the Payment Factor

Formula: (Trigger yield minus final county yield) divided by (trigger yield minus (expected county yield times (1 minus total loss factor))) = payment factor:

(106.1 bushels − 75.0 bushels) ÷ (106.1 bushels − (141.4 bushels × (1 − .82))) = .386.

Step 9: Calculate the Indemnity

Formula: Final policy protection times payment factor = indemnity:

$62,216 times .386 = $24,015 Indemnity.

§ 407.10 [Reserved]

§ 407.11 Area risk protection insurance for corn.

The corn crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Corn Crop Insurance Provisions

1. Definitions

Harvest. Combining or picking corn for grain or cutting for hay, silage, fodder, or earlage.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, corn seed that is broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all field corn that is:

(1) Yellow dent or white corn, including mixed yellow and white, waxy or high-lysine corn, high-oil corn blends containing mixtures of at least 90 percent high yielding yellow dent female plants with high-oil male pollinator plants, or commercial varieties of high-protein hybrids.

(2) Grown on insurable acreage in the county listed on the accepted application;

(3) Properly planted by the final planting date and reported on or before the acreage reporting date;

(4) Planted with the intent to be harvested; and

(5) Not planted into an established grass or legume or interplanted with another crop.

(b) Corn other than that specified in section 2(a)(1) (including but not limited to high-amylose, high-oil or high-protein (except as authorized in section 2(a)(1)), flint, flour, Indian, or blue corn, or a variety genetically adapted to provide forage for wildlife or any other open pollinated corn) may be insurable under this policy:

(1) If specified in the Special Provisions;

(2) The insurability requirements in 2(a) apply to this other corn and additional requirements for insurability may be stated for this other corn in the Special Provisions; and

(3) This other corn will be insured using the yields, rates, and prices for field corn unless otherwise specified in the actuarial documents.

3. Available Plans of Insurance

Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection are available for corn.

4. Payment Dates

(a) Final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

5. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas Counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.12 Area risk protection insurance for cotton.

The cotton crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Cotton Crop Insurance Provisions

1. Definitions

Harvest. Removal of the seed cotton from the stalk.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, cotton seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all upland cotton:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested.

(b) That is not (unless allowed by the Special Provisions):

(1) Colored cotton lint;

(2) Planted into an established grass or legume; or

(3) Interplanted with another spring planted crop;

(c) Cotton other than upland cotton may be insurable under this policy:

(1) If specified in the Special Provisions;

(2) The insurability requirements in 2(a) apply to other cotton and additional requirements for insurability may be stated for other cotton in the Special Provisions;

(3) Other cotton will be insured using the yields, rates, and prices for cotton unless otherwise specified in the actuarial documents

3. Available Plans of Insurance

Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection are available for cotton.

4. Payment Dates

(a) Final county revenues and final county yields will be determined prior to July 16 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to August 15 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

5. Program Dates

State and county	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.

State and county	Cancellation and termination dates	Contract change date
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other States	March 15	November 30.

§ 407.13 Area risk protection insurance for forage.

The forage crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

UNITED STATES DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Forage Crop Insurance Provisions

1. Definitions

Harvest. Removal of the forage from the field, and rotational grazing.

Planted acreage In addition to the provisions in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted, unless otherwise provided by the Special Provisions.

Rotational grazing. The defoliation of the insured forage by livestock, within a pasturing system whereby the forage field is subdivided into smaller parcels and livestock are moved from one area to another, allowing a period of grazing followed by a period for forage regrowth.

2. Insured Crop

The insured crop will be the forage types shown on the actuarial documents:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Intended for harvest; and

(d) Not grown with another crop.

3. Available Plans of Insurance

Only Area Yield Protection is available for forage.

4. Insurable Acreage

In addition to section 5 of the Area Risk Protection Insurance Basic Provisions, acreage seeded to forage after July 1 of the previous crop year will not be insurable.

5. Payment Dates

(a) Final county yields will be determined prior to May 1 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to May 31 following the crop year and following the determination of the final county yield.

6. Program Dates

November 30 is the cancellation and termination date for all states. The contract change date is August 31 for all states.

7. Annual Premium

In lieu of section 7(f) of the Area Risk Protection Insurance Basic Provisions, the annual premium is earned and payable on the acreage reporting date. You will be billed for premium due on the date shown in the Special Provisions. The premium will be determined based on the rate shown on the actuarial documents.

§ 407.14 [Reserved]

§ 407.15 Area risk protection insurance for grain sorghum.

The grain sorghum crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Grain Sorghum Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the sorghum for grain or cutting for hay, silage, or fodder.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, sorghum seed broadcast and subsequently mechanically incorporated will not be considered planted.

2. Insured Crop

(a) The insured crop will be all sorghum excluding hybrid sorghum seed:

(1) Grown on insurable acreage in the county listed on the accepted application;

(2) Properly planted by the final planting date and reported on or before the acreage reporting date;

(3) Planted with the intent to be harvested; and

(4) Not planted into an established grass or legume or interplanted with another crop.

(b) Other sorghum may be insurable under this policy:

(1) If specified in the Special Provisions;

(2) The insurability requirements in 2(a) apply to these other sorghum and additional requirements for insurability may be stated for these crops in the Special Provisions; and

(3) This other sorghum will be insured using the yields, rates, and prices for sorghum unless otherwise specified in the actuarial documents.

3. Available Plans of Insurance

Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection are available for sorghum.

4. Payment Dates

(a) Final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

5. Program Dates

State and County	Cancellation and termination dates	Contract change date
Val Verde, Edwards, Kerr, Kendall, Bexar, Wilson, Karnes, Goliad, Victoria, and Jackson Counties, Texas, and all Texas counties lying south thereof.	January 31	November 30.
El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties south and east thereof to and including Terrell, Crockett, Sutton, Kimble, Gillespie, Blanco, Comal, Guadalupe, Gonzales, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 15	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; and South Carolina.	February 28	November 30.

State and County	Cancellation and termination dates	Contract change date
All other Texas counties and all other states	March 15	November 30.

§ 407.16 Area risk protection insurance for soybean.

The soybean crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Soybean Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the soybeans.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth, will also be considered planted.

2. Insured Crop

The insured crop will be all soybeans:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested; and

(d) Not planted into an established grass or legume or interplanted with another crop.

3. Available Plans of Insurance

Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection are available for soybeans.

4. Payment Dates

(a) Final county revenues and final county yields will be determined prior to April 16 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to May 16 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

5. Program Dates

State and county	Cancellation and termination dates	Contract change date
Jackson, Victoria, Goliad, Bee, Live Oak, McMullen, La Salle, and Dimmit Counties, Texas and all Texas counties lying south thereof.	January 31	November 30.
Alabama; Arizona; Arkansas; California; Florida; Georgia; Louisiana; Mississippi; Nevada; North Carolina; South Carolina; and El Paso, Hudspeth, Culberson, Reeves, Loving, Winkler, Ector, Upton, Reagan, Sterling, Coke, Tom Green, Concho, McCulloch, San Saba, Mills, Hamilton, Bosque, Johnson, Tarrant, Wise, and Cooke Counties, Texas, and all Texas counties lying south and east thereof to and including Maverick, Zavala, Frio, Atascosa, Karnes, De Witt, Lavaca, Colorado, Wharton, and Matagorda Counties, Texas.	February 28	November 30.
All other Texas counties and all other states	March 15	November 30.

§ 407.17 Area risk protection insurance for wheat.

The wheat crop insurance provisions for Area Risk Protection Insurance for the 2013 and succeeding crop years are as follows:

United States Department of Agriculture

Federal Crop Insurance Corporation

Area Risk Protection Insurance

Wheat Crop Insurance Provisions

1. Definitions

Harvest. Combining or threshing the wheat for grain.

Planted acreage. In addition to the definition contained in the Area Risk Protection Insurance Basic Provisions, land on which seed is initially spread onto the soil surface by any method and which subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will also be considered planted.

2. Insured Crop

The insured crop will be all wheat:

(a) Grown on insurable acreage in the county listed on the accepted application;

(b) Properly planted by the final planting date and reported on or before the acreage reporting date;

(c) Planted with the intent to be harvested;

(d) Not planted into an established grass or legume;

(e) Not interplanted with another crop; and

(f) Not planted as a nurse crop, unless seeded at the normal rate and intended for harvest as grain.

3. Available Plans of Insurance

Area Revenue Protection, Area Revenue Protection with the Harvest Price Exclusion, and Area Yield Protection are available for wheat.

4. Payment Dates

(a) Final county revenues and final county yields will be determined prior to April 1 following the crop year.

(b) If an indemnity is due, we will issue any payment to you prior to May 1 following the crop year and following the determination of the final county revenue or the final county yield, as applicable.

5. Program Dates

State and county	Cancellation and termination dates	Contract change date
All Colorado counties except Alamosa, Conejos, Costilla, Rio Grande, and Saguache; all Montana counties except Daniels and Sheridan Counties; all South Dakota counties except Corson, Walworth, Edmonds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties and all South Dakota counties east thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie Counties; and all other states except Alaska, Arizona, California, Maine, Minnesota, Nevada, New Hampshire, North Dakota, Utah, and Vermont.	September 30	June 30.
Arizona; California; Nevada; and Utah	October 31	June 30.

State and county	Cancellation and termination dates	Contract change date
Alaska; Alamosa, Conejos, Costilla, Rio Grande, and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15	November 30.

Signed in Washington, DC, on July 7, 2011.

William J. Murphy,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 2011–17781 Filed 7–21–11; 8:45 am]

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Part V

Bureau of Consumer Financial Protection

12 CFR Part 1004

Alternative Mortgage Transaction Parity (Regulation D); Interim Final Rule

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1004

[Docket No. CFPB–2011–0004]

RIN 3170–AA04

Alternative Mortgage Transaction Parity (Regulation D)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Interim final rule with request for public comment.

SUMMARY: The Bureau of Consumer Financial Protection (CFPB) is publishing for public comment an interim final rule establishing Regulation D (Alternative Mortgage Transaction Parity) pursuant to the Alternative Mortgage Transaction Parity Act (AMTPA) and the Truth in Lending Act. The interim final rule is necessary to avoid a regulatory gap created by the amendments to AMTPA in the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Without an interim final rule that takes immediate effect, state housing creditors would no longer be able to make variable rate mortgage loans and other alternative mortgage transactions pursuant to AMTPA in states that prohibit such transactions, thus denying consumers access to that form of credit. Until July 22, 2012, the interim final rule applies only to state housing creditors seeking to invoke federal preemption of state law under AMTPA. The interim final rule will be in place as a temporary measure pending the CFPB's completion of a notice-and-comment rulemaking to promulgate permanent rules, including rules governing alternative mortgage transactions made by federally chartered housing creditors. The CFPB seeks public comment in anticipation of that process.

DATES: This interim final rule is effective July 22, 2011.

Mandatory compliance date: Compliance with § 1004.4 of this interim final rule is optional until July 22, 2012 for federal housing creditors and for state housing creditors that are not relying on preemption of state law under § 1004.3. On July 22, 2012, compliance with § 1004.4 is mandatory for all creditors, except as provided in § 1004.4(d).

Comments: Comments must be received on or before September 22, 2011.

ADDRESSES: You may submit comments, identified by *Docket No. CFPB–2011–0004,* by any of the following methods:

- *Electronic: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier in Lieu of Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036.

All submissions must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. In general, all comments received will be posted without change to *http://www.regulations.gov.* In addition, comments will be available for public inspection and copying at 1801 L Street, NW., Washington, DC 20036, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or social security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT: Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1801 L Street, NW., Washington, DC 20036, (202) 435–7275.

SUPPLEMENTARY INFORMATION:

I. Overview

The Bureau of Consumer Financial Protection (CFPB) is publishing for public comment this interim final rule implementing amendments to the Alternative Mortgage Transaction Parity Act (AMTPA) [1] made by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).[2] AMTPA authorizes state-licensed or -chartered housing creditors (state housing creditors) [3] to make alternative mortgage transactions in compliance with federal rather than state law, in order to establish parity and competitive equality between state and federal lenders. Effective July 21, 2011, the Dodd-Frank Act amended AMTPA to transfer rule-writing authority to the CFPB and to narrow the scope of federal preemption. After July 21, the Dodd-Frank Act provides that state housing creditors may only make alternative mortgage transactions under AMTPA if they comply with rules issued by the CFPB, even though the Dodd-Frank Act does not vest the CFPB with authority to issue such rules before that date. Accordingly, CFPB interim rules are needed immediately in order to avoid a suspension in the operation of AMTPA, which would prevent state housing creditors from making variable rate loans and other alternative mortgage transactions in states where such loans are otherwise prohibited by state law.

The CFPB does not believe that Congress intended its amendments to AMTPA to create a regulatory gap that would interrupt access to credit. As discussed below in Section IV, the CFPB finds that there is good cause to issue this interim final rule without notice and comment and effective immediately in order to avoid the risk of disrupting mortgage markets, placing state housing creditors at an inappropriate competitive disadvantage, and reducing consumers' access to credit. In particular, the CFPB is concerned that failure to issue an interim final rule addressing the modification of existing AMTPA loans could create uncertainty and discourage such modifications. In advance of issuing this interim final rule, the CFPB issued a public bulletin alerting state chartered and licensed lenders and other interested parties that: (1) the Dodd-Frank Act amendments to AMTPA take effect on July 21, 2011; and (2) the amendments affect what laws apply to mortgage loans issued by state chartered or licensed lenders after that date by narrowing the statutory definition of ''alternative mortgage transaction'' and the scope of preemption under AMTPA.[4] In addition, the CFPB reached out to state and federal regulators, trade associations, and consumer advocates to urge planning for an orderly transition process. The CFPB will continue its outreach and consultations while it engages in a notice-and-comment rulemaking to more fully effectuate the Dodd-Frank Act amendments. The CFPB is committed to beginning the notice-and-comment rulemaking process as soon as possible after the comment period closes on the interim final rule.

[1] 12 U.S.C. 3801 *et seq.*

[2] Public Law 111–203, 124 Stat. 1376 (2010) (hereinafter ''Pub. L. 111–203'').

[3] Under 12 U.S.C. 3802(2), the term ''housing creditor'' means: (1) A depository institution as defined in 12 U.S.C. 1735f–7 note; (2) a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act; (3) a person who regularly makes loans, credit sales, or advances secured by an interest in residential real property, dwellings, cooperatives or residential manufactured homes; and (4) any transferee of a person in the other three categories.

[4] Available at *http://www.consumerfinance.gov/wp-content/uploads/2011/06/Amendments-to-the-Alternative-Mortgage-Transaction-Parity-Act.pdf.*

II. Summary of the Interim Final Rule

The interim final rule applies to an alternative mortgage transaction if the creditor received an application for that transaction on or after July 22, 2011. If the creditor received the application before July 22, 2011, the alternative mortgage transaction is generally grandfathered and remains subject to the AMTPA provisions and regulations in effect at the time of application. Thus, a consistent set of requirements will apply from application to completion of an alternative mortgage transaction. The rule also clarifies that modifications, renewals, or extensions of alternative mortgage transactions do not result in a loss of AMTPA preemption. This clarification is intended to facilitate the modification of loans for distressed borrowers. However, refinancings are treated as new transactions that must independently meet the requirements for preemption in effect at the time of refinancing.

Consistent with the Dodd-Frank Act amendments to AMTPA, the interim final rule's definition of ''alternative mortgage transaction'' is limited to transactions in which the interest rate or finance charge may be adjusted or renegotiated. As a result, previously preempted state consumer protection laws will apply to fixed-rate mortgage loans with interest-only payment periods or negative amortization features, fixed-rate balloon loans where the lender does not make a commitment to renew the loan, and certain other fixed-rate products that previously qualified as alternative mortgage transactions but no longer qualify because of the Dodd-Frank Act amendments.

The interim final rule also implements the Dodd-Frank Act's amendment to the scope of preemption under AMTPA. Specifically, the rule provides that state laws are preempted only to the extent that they restrict the ability of a state housing creditor to adjust or renegotiate an interest rate or finance charge with respect to an alternative mortgage transaction or the ability of a state housing creditor to change the amount of interest or finance charges included in a payment as a result of the adjustment or renegotiation of the rate or charge. In addition, the interim final rule provides that general state laws regulating loan features or charges that are not integral to alternative mortgage transactions are no longer preempted. Accordingly, state law mortgage disclosure requirements and restrictions on late fees, rate increases as a result of late payment, prepayment penalties, interest-only payment periods, and negative amortization are no longer preempted under AMTPA with respect to alternative mortgage transactions. Furthermore, state laws prohibiting unfair or deceptive acts and practices generally are not subject to preemption under AMTPA.

The interim final rule also provides standards governing alternative mortgage transactions made by state housing creditors pursuant to AMTPA. The rule generally requires that adjustable rate mortgages utilize a publicly available index that is beyond the creditor's control. In the alternative, a closed-end mortgage may use a formula or schedule identifying the amount and timing of interest rate increases. Renegotiable rate mortgages (also called renewable balloon-payment mortgages) must include a written commitment by the lender to renew the loan, subject to certain limitations. In addition, state housing creditors (like all other creditors) must comply with certain federal underwriting requirements.

Initially, these standards are applicable only to state housing creditors seeking to invoke preemption of certain state laws under AMTPA. However, because AMTPA is designed to promote parity between federal and state creditors, the Dodd-Frank Act amendments effectively require the CFPB to engage in a two-part rulemaking that: (1) Establishes standards for origination of alternative mortgage transactions by *federally chartered* housing creditors (federal housing creditors) under sources of law other than AMTPA; and then (2) designates such standards as applicable to state housing creditors that make alternative mortgage transactions under AMTPA. The interim final rule therefore relies on the Truth in Lending Act (TILA) [5] to establish the minimum federal standards for alternative mortgage transactions.

The CFPB has provided a one-year extended compliance period (until July 21, 2012) and a temporary safe harbor for federal housing creditors and for state housing creditors that do not seek to invoke AMTPA preemption so that these lenders may continue to originate variable rate mortgages and other alternative mortgage transactions in accordance with other sources of law. However, the CFPB expects that its notice-and-comment rulemaking process to more fully implement the Dodd-Frank Act amendments will focus on the origination of alternative mortgage transactions across the broader marketplace, and seeks comment in anticipation of that rulemaking.

III. Background

A. AMTPA

AMTPA was enacted by Congress in 1982 to stimulate consumer access to credit and increase parity between state and federal creditors during an era of unusually high interest rates. In Senate hearings held in 1981, mortgage bankers testified that laws in 26 states either barred state housing creditors from originating alternative mortgage loans or imposed significantly greater restrictions on such loans than those that applied to federal housing creditors operating under federal regulations.[6] As the first section of the Act explained:

> It is the purpose of [AMTPA] to eliminate the discriminatory impact that [federal regulations authorizing federally chartered depository institutions to make, purchase, and enforce alternative mortgage transactions] have upon nonfederally chartered housing creditors and provide them with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.[7]

Accordingly, except in states that opted out of the preemption regime within three years after enactment,[8] AMTPA generally authorized state housing creditors to make, purchase, and enforce alternative mortgage transactions ''notwithstanding any State constitution, law, or regulation.'' [9] However, this statutory preemption applied only to the extent that state housing creditors made alternative mortgage transactions in accordance with the regulations governing similar federal housing creditors. Specifically, AMTPA provided that state-chartered banks were to comply with regulations issued by the OCC for national banks. Similarly, state-chartered credit unions were to comply with regulations issued by the NCUA for Federal credit unions, while all other state housing creditors were to comply with regulations issued by the Federal Home Loan Bank Board (FHLBB) (the predecessor of the OTS).[10] Furthermore, rather than creating separate authority for the OCC, NCUA,

[5] 15 U.S.C. 1601, *et seq.*

[6] Testimony cited in 67 FR 60542, 60543 (Sept. 26, 2002).

[7] 12 U.S.C. 3801(b).

[8] 12 U.S.C. 3804. Six states exercised their opt-out authority in whole or in part: Arizona, Maine, Massachusetts, New York, South Carolina, and Wisconsin. *See, e.g.,* Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 11.4 (4th ed. 2001).

[9] 12 U.S.C. 3803(c).

[10] 12 U.S.C. 3803(a).

and FHLBB/OTS to issue regulations governing alternative mortgage transactions under AMTPA itself, AMTPA specifically stated that, in order to receive preemption, state housing creditors must comply with regulations issued by these agencies under other statutory authority.[11]

Thus, AMTPA established a sort of ''piggybacking'' regime under which state housing creditors could choose to comply with federal regulations applicable to their federally chartered counterparts if state law would otherwise prohibit or restrict a particular mortgage transaction. The OCC, NCUA, and FHLBB/OTS were directed to designate which of their regulations issued under other statutory authority applied in place of state law to the state housing creditors within their respective jurisdictions.[12]

The NCUA designated all of its regulations concerning mortgage lending as applicable to state credit unions conducting alternative mortgage transactions,[13] while the OCC and the FHLBB/OTS each designated a narrower set of regulations that addressed the origination of alternative mortgage loans specifically. The OCC regulations applied to ''adjustable-rate mortgage loans'' as defined by that agency,[14] while the FHLBB/OTS rules applied to a broader range of alternative mortgage transactions as defined under AMTPA.[15] Although the OCC and OTS rules differed regarding the scope of transactions subject to AMTPA and the extent of preemption, they overlapped significantly with regard to the substantive standards applicable to alternative mortgage transactions.

B. The Dodd-Frank Act

The Dodd-Frank Act was enacted on July 21, 2010, in response to widespread disruption in mortgage markets and the larger economy. A significant focus of the statute was the enhancement of consumer protections regarding mortgage lending practices that contributed to the crisis. In addition to consolidating in the CFPB certain consumer financial protection authorities that had previously been spread across seven different federal agencies, the Dodd-Frank Act amends existing federal consumer financial laws and establishes new standards that phase in over time concerning a wide range of mortgage lending practices, including compensation for mortgage originators, assessments of consumers' ability to repay, and mortgage servicing.

The Dodd-Frank Act makes three significant amendments with regard to AMTPA, all of which are effective on the designated transfer date (July 21, 2011).[16] First, Section 1083 of the Dodd-Frank Act narrows the definition of ''alternative mortgage transactions'' that are eligible for preemption of state law under AMTPA. The revised definition in 12 U.S.C. 3802(1) continues to include loans ''in which the interest rate or finance charge may be adjusted or renegotiated,'' but deletes additional language that specifically included within the prior definition: (1) Fixed-rate mortgage loans in which the debt matures before the end of the loan's amortization schedule (a type of balloon loan); and (2) mortgage loans ''involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed rate, fixed term transactions,'' including but not limited to shared equity and shared appreciation transactions.

The result of this amendment is that AMTPA no longer preempts some state laws governing these types of loans, although they may be preempted by other statutes for some creditors. For example, prior to the Dodd-Frank Act, a fixed-rate mortgage loan with an interest-only payment period would have met the definition of an ''alternative mortgage transaction'' because it involved a payment variation ''not common to traditional fixed rate, fixed term transactions.'' If a state housing creditor made such an alternative mortgage in compliance with the applicable federal regulations, AMTPA preempted any conflicting state law, thereby permitting the housing creditor to offer and complete the transaction. Under the Dodd-Frank Act, however, only loans ''in which the interest rate or finance charge may be adjusted or renegotiated'' are eligible for AMTPA preemption. Because a fixed-rate mortgage loan with an interest-only payment period does not meet this definition, AMTPA will not preempt state laws governing such products as of July 22, 2011.

Second, Section 1083 narrows the types of state laws that are preempted under AMTPA. 12 U.S.C. 3803(c) originally provided that a state housing creditor could make alternative mortgage transactions ''notwithstanding any State constitution, law, or regulation.'' Section 1083 amended that language to provide that, after July 21, 2011, a state housing creditor may make such transactions ''notwithstanding any State constitution, law, or regulation *that prohibits an alternative mortgage transaction.''*[17] Section 1083 further amended AMTPA to provide that ''a State constitution, law, or regulation that prohibits an alternative mortgage transaction does not include any State constitution, law, or regulation that regulates mortgage transactions *generally,* including any restriction on prepayment penalties or late charges.''[18] Thus, if a state law prohibited certain conduct with respect to both alternative mortgage transactions and other mortgage transactions, that law generally would not be preempted with respect to alternative mortgage transactions.

Third, Sections 1061 and 1083 of the Dodd-Frank Act transferred, among other things, rule-writing authority under AMTPA from the OCC, NCUA, and OTS to the CFPB.[19] In doing so, Congress replicated AMTPA's original ''piggybacking'' scheme. Accordingly, after July 21, 2011, alternative mortgage transactions made by state housing creditors must comply with regulations issued by the CFPB for ''federally chartered housing creditors under provisions of law other than [12 U.S.C. 3803].''[20] The rulemaking required under Section 1083 therefore effectively requires two components: one establishing standards for federal housing creditors to follow in originating alternative mortgage transactions under other federal consumer financial laws administered by the CFPB; and the other designating those standards as applicable to state housing creditors that seek to invoke federal preemption under AMTPA.

[11] *Id.*

[12] AMTPA also directed these agencies to determine whether any of their existing regulations were ''inappropriate'' to apply to state housing creditors or needed to be conformed for use by such lenders. Garn-St Germain Depository Institutions Act of 1982, Public Law 97–320, § 807(b), 96 Stat. 1469 (Oct. 15, 1982) (codified at 12 U.S.C. 3801 note). No guidance was provided as to standards for appropriateness.

[13] 47 FR 54,424 (Dec. 3, 1982).

[14] 47 FR 55,911 (Dec. 14, 1982).

[15] 47 FR 51,732 (Nov. 17, 1982); *see also* 48 FR 23,032 (May 23, 1983) (explaining that the earlier rulemaking was designed to apply federal standards regarding adjustments to rate, payment, balance, and term, and regarding disclosure, but not general safety and soundness requirements such as loan-to-value ratios).

[16] 75 FR 57252 (Sept. 20, 2010).

[17] Public Law 111–203, § 1083(a)(2)(B) (emphasis added).

[18] *Id.* (emphasis added).

[19] Public Law 111–203, § 1061 (transferring, among other things, the ''consumer financial protection functions'' of the federal prudential regulators to the CFPB as of the designated transfer date); *see also* § 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); *id.* § 1002(12) (defining ''enumerated consumer laws'' to include AMTPA and TILA); *id.* § 1083 (amending 12 U.S.C. 3803).

[20] Public Law 111–203, § 1083(a)(2)(A)(iv).

Accordingly, the regulations required by Section 1083 impact the mortgage market as a whole, not just a subset of state lenders.[21]

As a general matter, the amendments to AMTPA do not affect transactions entered into on or before July 21, 2011.[22] After July 21, however, AMTPA will preempt state laws that prohibit new alternative mortgage transactions only if: (1) Such transactions meet the revised definition of ''alternative mortgage transaction;'' (2) the state law in questions falls within the narrowed scope of AMTPA preemption; and (3) the creditor complies with regulations issued by the CFPB.[23] Thus, in order for AMTPA to continue facilitating access to credit in states in which alternative mortgage transactions are prohibited by state law, the CFPB must issue regulations governing such transactions. Despite this requirement, however, the Dodd-Frank Act did not vest the CFPB with authority to issue such regulations until after July 21, 2011.[24] Accordingly, absent adoption of this interim final rule on July 22, 2011, state housing creditors could no longer invoke AMTPA preemption because there would be no CFPB regulations governing alternative mortgage transactions.

IV. Legal Authority

A. Rulemaking Authority

The CFPB is issuing this interim final rule pursuant to its authority under AMTPA, TILA, and the Dodd-Frank Act. Effective July 21, 2011, Section 1061 of the Dodd-Frank Act transfers to the CFPB the ''consumer financial protection functions'' previously vested in certain other federal agencies. The term ''consumer financial protection function'' is defined to include ''all authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law, including performing appropriate functions to promulgate and review such rules, orders, and guidelines.'' [25] AMTPA and TILA are Federal consumer financial laws.[26] Accordingly, effective July 21, 2011, the authority of the OCC, NCUA, and OTS to issue regulations pursuant to AMTPA and the authority of the Board of Governors of the Federal Reserve System (Federal Reserve Board) to issue regulations pursuant to TILA transfer to the CFPB.[27]

Section 1083 of the Dodd-Frank Act directs the CFPB to issue regulations implementing the amended AMTPA ''after the designated transfer date.'' [28] Specifically, the CFPB is directed to: (1) Review the regulations identified by the OCC and NCUA pursuant to AMTPA; (2) determine whether those regulations are fair, not deceptive, and otherwise meet the objectives of title X of the Dodd-Frank Act;[29] and (3) promulgate regulations governing alternative mortgage transactions that are eligible for AMTPA preemption.[30] In addition, AMTPA provides that the statutory definition of ''alternative mortgage transaction'' in 12 U.S.C. 3802(1) is to be further ''described and defined by applicable regulation.'' [31]

As amended, AMTPA states that, in order to receive preemption, state housing creditors must comply with regulations issued by the CFPB with respect to federally chartered housing creditors ''*under provisions of law other than this section* [12 U.S.C. 3803].'' [32] As noted above, the Federal Reserve Board's rulemaking authority pursuant to TILA transferred to the CFPB under Section 1061 on the designated transfer date. Accordingly, in addition to its authority under AMTPA, the CFPB is using its rulemaking authority under TILA to issue this interim final rule.

As amended by the Dodd-Frank Act, TILA directs the CFPB to ''prescribe regulations to carry out the purposes of [TILA].''[33] In addition, the CFPB is generally authorized to issue regulations that contain such classifications, differentiations, or other provisions, or that provide for such adjustments and exceptions for any class of transactions, that in the CFPB's judgment are necessary or proper to effectuate the purpose of TILA, facilitate compliance with TILA, or prevent circumvention or evasion of TILA.[34] In the past, the Federal Reserve Board has used this TILA authority to issue extensive rules that promote the informed use of credit by mandating disclosures and substantively regulating certain practices regarding mortgages and home equity lines of credit.[35] The CFPB also has the authority under TILA (as amended by Section 1405(a) of the Dodd-Frank Act) to issue regulations that it ''finds to be * * * necessary or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with'' Sections 129B and 129C of TILA, which are new sections added by the Dodd-Frank Act to regulate various mortgage originator practices and the evaluation of borrowers' ability to repay their mortgages.[36]

B. Authority To Issue an Interim Final Rule Without Prior Notice and Comment

The Administrative Procedure Act (APA) [37] generally requires public notice and an opportunity to comment before promulgation of substantive regulations.[38] It also generally requires that a final regulation be published not less than 30 days prior to its effective

[21] However, as discussed above, federal housing creditors and any state housing creditors that do not seek AMTPA preemption are not required to comply with the CFPB's regulations until July 22, 2012. Furthermore, § 1004.4(d) of the interim final rule provides that these creditors may continue to make variable rate mortgages and other alternative mortgage transactions consistent with other applicable provisions of law.

[22] Public Law 111–203, § 1083(a)(2)(A)(i). As discussed below with respect to § 1004.1, an alternative mortgage transaction is made for purposes of this interim final rule on the date the creditor receives the application. Thus, the amended AMTPA preemption standards do not apply to an alternative mortgage transaction if the application was received on or before July 21, 2011, even if the transaction is completed after that date.

[23] Public Law 111–203, § 1083(a)(2)(A)(iv).

[24] Public Law 111–203, § 1061 (transferring, among other things, the ''consumer financial protection functions'' of the federal prudential regulators to the CFPB as of the designated transfer date); § 1083(b) (transferring AMTPA authority to the CFPB on the designated transfer date); *see also id.* § 1083(a)(2)(C) (directing the CFPB to issue AMTPA regulations ''after the designated transfer date'').

[25] Public Law 111–203, § 1061(a)(1). Effective on the designated transfer date, the CFPB is also granted ''all powers and duties'' vested in each of the federal agencies, relating to the consumer financial protection functions, on the day before the designated transfer date.

[26] Public Law 111–203, § 1002(14) (defining ''Federal consumer financial law'' to include the ''enumerated consumer laws''); *id.* § 1002(12) (defining ''enumerated consumer laws'' to include AMTPA and TILA).

[27] Section 1066 of the Dodd-Frank Act grants the Secretary of the Treasury interim authority to perform certain functions of the CFPB. Pursuant to that authority, Treasury is publishing this interim final rule on behalf of the CFPB.

[28] Public Law 111–203, § 1083(a)(2)(C) (creating a new 12 U.S.C. 3803(d)).

[29] As discussed below with respect to § 1004.4, the CFPB believes that it is consistent with the intent and purpose of Section 1083 to interpret the requirement that the CFPB determine whether the OCC and NCUA regulations are unfair or deceptive as requiring the CFPB to determine whether those regulations are effective in *preventing* unfair or deceptive acts or practices. In addition, the CFPB believes that it is appropriate to consider the OTS regulations governing alternative mortgage transactions when making this determination.

[30] *Id.*

[31] Furthermore, 12 U.S.C. 3801 note, which was enacted as part of AMTPA in 1982, directs the OCC, NCUA, and FHLBB to identify, describe, and publish existing regulations that should or should not apply to alternative mortgage transactions and to make any necessary changes to address alternative mortgage transactions. *See* Public Law 97–320 (1982). The Dodd-Frank Act does not remove this authority, which transfers to the CFPB pursuant to Section 1061 of the Dodd-Frank Act.

[32] Public Law 111–203, § 1083(a)(2)(A)(iv) (emphasis added).

[33] *Id.* § 1100A(2); 15 U.S.C. 1604(a).

[34] *Id.*

[35] *See* Regulation Z, 12 CFR Part 226.

[36] Public Law 111–203, § 1405(a); *see also* 15 U.S.C. 1639b, 1639c.

[37] 5 U.S.C. 551 *et seq.*

[38] 5 U.S.C. 553(b), (c).

date.[39] However, the APA provides an exception to notice-and-comment procedures where an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest.[40] The APA also provides a good cause exception to the effective date requirement.[41] The CFPB finds that there is good cause to conclude that providing notice and opportunity for comment would be impracticable and contrary to the public interest under these circumstances. The CFPB also finds that there is good cause to issue this rule effective immediately; however, the CFPB is making compliance with the requirements in § 1004.4 optional for certain creditors until July 22, 2012.

The CFPB's findings are based on the following factors. As discussed above, beginning on July 22, 2011, state housing creditors may only make new alternative mortgage transactions pursuant to AMTPA if they comply with regulations issued by the CFPB. However, the CFPB was unable to issue a notice of proposed rulemaking under AMTPA or TILA prior to July 21, 2011, because rule-writing authority under each of those statutes was vested in other agencies and did not transfer to the CFPB until that date. As a result, the CFPB finds that it would have been impracticable to engage in notice-and-comment rulemaking prior to July 21, 2011.

Furthermore, the CFPB's failure to issue an interim final rule without advance notice and comment that is effective immediately would be contrary to the public interest. Without CFPB rules in place by July 22, 2011, a regulatory gap would occur, in which state housing creditors would not be able to continue issuing variable rate and other alternative mortgage loans pursuant to AMTPA in states that prohibit such transactions, thus denying consumers access to that form of credit.[42] In addition, the CFPB is concerned that failure to issue an interim final rule addressing the modification of existing AMTPA loans could create uncertainty and discourage such modifications.

Although originations of variable rate alternative mortgage loans have slowed significantly in recent years, they still constitute approximately 12 percent of mortgage originations and are experiencing modest growth.[43] In addition, while balloon mortgage loans represent a very small percentage of total originations, they can be important products in certain markets served by rural and community banks. Absent this interim final rule, state housing creditors would no longer be able to offer—and consumers would no longer be able to obtain—these products to the extent they are inconsistent with state law.

Furthermore, as discussed below with respect to § 1004.1, this interim final rule clarifies that modifying an alternative mortgage transaction made on or before July 21, 2011 does not result in a loss of AMTPA preemption. Without this guidance, state lenders would likely reduce the availability of modifications for fear of losing AMTPA preemption.

No current data sources track the amount of lending activity that would be impermissible but for AMTPA preemption. However, even with regard to basic variable rate mortgages, the CFPB's initial research indicates that a significant number of states impose restrictions on the size, frequency, or timing of interest rate and payment adjustments and renegotiations.[44] Similarly, several states impose substantive restrictions on the ability of housing creditors to offer mortgage loans with a balloon payment feature.[45]

[39] 5 U.S.C. 553(d).

[40] 5 U.S.C. 553(b)(B).

[41] 5 U.S.C. 553(d)(3).

[42] The CFPB notes that the amendments to AMTPA and this interim final rule do not affect preemption of state law under other statutes.

[43] Federal Reserve Bank of New York, Current Issues in Economics and Finance (Dec. 2010); Inside Mortgage Finance data; *see also* Tara Siegel Bernard, *Borrowers Wade Back Into Adjustable-Rate Mortgages,* N.Y. Times, June 21, 2011 (available at http://bucks.blogs.nytimes.com/2011/06/21/borrowers-wade-back-into-adjustable-rate-mortgages/).

[44] *See, e.g.,* Cal. Civ. Code § 1916.5 (2004) (requiring certain provisions for any variable rate loan, including caps on interest rate increases and a promise that the rate of interest shall change no more than twice a year); § 1916.7 (1981) (requiring certain provisions for adjustable-rate mortgages, including minimum term and amortization periods, limitations on changes in interest and monthly payments, limitations on which indices lenders may use to determine interest rate changes, and requirements relating to extending the loan under certain circumstances); § 1916.8 (1980) (defining a renegotiable rate mortgage loan as a loan issued for a term of three, four, or five years, automatically renewable at equal intervals, repayable in equal monthly installments of principal and interest, in an amount at least sufficient to amortize the loan over the remaining term of the mortgage, and setting requirements for interest rate changes and disclosures); § 1920 (1997) (providing requirements for any mortgage instrument, including standards for the adjustment of interest rates and monthly payments); Cal. Fin. Code § 7504 (1984) (allowing an association to adjust the interest rate, payment, balance, or term-to-maturity on any loan secured by real property as authorized by the loan contract; requiring that such adjustments be subject to certain limitations including loan term limits, loan-to-value ratios, and interest rate indices, and allowing loans to be fully amortized, partially amortized, nonamortized, a reverse annuity mortgage, or an open end line of credit loan); Ga. Code § 7–6A–5 (2004) (subjecting high-cost home loans to certain limitations, including balloon payments and interest rate increases, and requiring creditors to allow the borrower to modify, renew, extend, or amend the loan at no cost); Ind. Code § 28–15–11–14 (1997) (setting requirements for adjustable mortgage loans, including limitations on adjustments to the principal loan balance, interest rate adjustments, and fees); Kan. Stat. § 16–207 (1999) (setting interest rate limitations on any loan, including all first mortgage loans and contracts for deed to real estate); Ky. Rev. Stat. § 360.150 (1984) (subjecting all adjustable rate mortgages to certain provisions, including limitations on interest rate changes and installment payments and disclosures); La. Rev. Stat. § 9:3504 (2004) (authorizing adjustable rate mortgages on certain terms relating to interest rate indices, the frequency of interest rate adjustments, and installment adjustments, and exempting certain types of adjustable rate mortgages from the applications of laws on usury and interest upon interest); N.J. Stat. § 46:10B–40 (2008) (providing for a mandatory three-year extension period during which the interest rate on an introductory rate mortgage shall not increase for certain eligible borrowers who do not have sufficient monthly income to pay monthly payments that will apply after the interest rate resets); N.M. Stat. 56–1–16 (1983) (setting requirements for mobile home loans, including that adjustments in the rate shall be tied to a specific index, limitations on frequency and amount of rate adjustments, and allowance of changes in installment payments due to rate adjustments); 41 Pa. Stat. § 301 (2008) (setting caps on interest rates and limitations on frequency and amount of rate adjustments for residential mortgages); Tex. Fin. Code § 347.102 (1997) (authorizing interest rate adjustments provided that the lender ties the rate changes to an approved index according to the statute). This footnote is included for illustrative purposes and does not constitute a determination by the CFPB that specific state laws are or are not preempted by the interim final rule.

[45] *See, e.g.,* Cal. Bus. & Prof. § 10244.1 (1973) (restricting payments greater than twice the amount of the smallest installment for loans with a term of six years or less); Colo. Rev. Stat. § 5–3.5–102 (2003) (restricting payments greater than twice the average of earlier regularly scheduled payments unless such balloon payment becomes due and payable not less than 120 months after the date of execution of the loan); DC Code § 26–1152.13 (2002) (restricting scheduled payment more than twice as large as the average of earlier scheduled monthly payments unless the balloon payment becomes due and payable not less than 7 years after the date of the loan closing); Ga. Code, § 7–6A–5(2) (2002) (prohibiting scheduled payments more than twice as large as earlier payments in certain high cost home loans); Ill. Admin. Code tit. 38, § 1050.1272 (2005) (restricting certain balloon payments unless such balloon payment becomes due and payable at least 15 years after the loan's origination); Ind. Code § 24–9–4–3 (2005) (restricting payments greater than twice the average of earlier regularly scheduled payments for certain high cost loans unless such balloon payment becomes due and payable not less than 120 months after the date of execution of the loan); Ky. Rev. Stat. Ann. § 360.100 (2010) (restricting payments greater than twice the amount of the smallest installment for certain high cost loans); N.C. Gen. Stat. § 24–1.1A (1973) (restricting certain affiliates from providing balloon payments on home loans in excess of six months); 7 Pa. Cons. Stat. Ann. § 6020–155 (1995) (prohibiting balloon loans for financing the purchase of an owner occupied one or two family residential property); Tex. Fin. Code Ann. § 343.202 (2006) (restricting scheduled payments more than twice as large as earlier payments in certain high cost home loans unless the balloon payment becomes due not less than 60 months after the date

In some cases, these state law requirements are stricter than—or materially different from—the restrictions on federal housing creditors that state housing creditors were entitled to follow until July 22, 2011.

A curtailment in variable and adjustable rate loans would be harmful to consumers for whom these products can serve an important purpose. For example, they can result in lower interest rates for borrowers who plan to sell their homes or refinance within a few years or are otherwise able and willing to assume associated interest rate risk. These products may also enable some creditworthy consumers who otherwise could not qualify for a fixed-rate loan to obtain a mortgage loan. Furthermore, as noted above, balloon-payment mortgage loans can be an important product in certain markets.

For these reasons, the CFPB finds that the failure to adopt an interim final rule would create a risk of substantially disrupting mortgage markets, placing state housing creditors at an inappropriate competitive disadvantage, and reducing access to credit for consumers. For many consumers and state lenders, the resulting curtailment of alternative mortgages would be sudden, unexpected, and disruptive. This outcome would conflict not only with the purpose of AMTPA but also with a fundamental purpose of the Dodd-Frank Act, which is to ''ensur[e] that all consumers have access to markets for consumer financial products and services and that [such markets] are fair, transparent, and competitive.'' [46] The CFPB does not believe that Congress intended such a result and finds good cause to issue the interim final rule without notice-and-comment procedures and effective immediately as a temporary measure pending the completion of a notice-and-comment rulemaking proceeding.

In order to mitigate disruptions resulting from the implementation of the amendments to AMTPA, the CFPB issued a public bulletin in advance of this interim final rule alerting state chartered and licensed lenders and other interested parties that: (1) The Dodd-Frank Act amendments to AMTPA take effect on July 21, 2011; and (2) the amendments affect what laws apply to mortgage loans issued by state chartered or licensed lenders after that date by narrowing the statutory definition of ''alternative mortgage transaction'' and the scope of preemption under AMTPA.[47] In addition, the CFPB reached out to state and federal regulators, trade associations, and consumer advocates to urge planning for an orderly transition. The CFPB will continue its outreach and consultations while it engages in a notice-and-comment rulemaking to more fully effectuate the Dodd-Frank Act amendments. The CFPB is committed to beginning the notice-and-comment rulemaking process as soon as possible after the comment period closes on the interim final rule.

V. Request for Comment

Requests for comment on the interim final rule and related matters are listed in the section-by-section analysis below. In anticipation of its upcoming notice-and-comment rulemaking proceeding, the CFPB also seeks comment on a wide range of issues relating to AMTPA, state regulation of alternative mortgage transactions, and regulations that have previously been designated by the OCC, NCUA, and OTS/FHLBB as applicable to state housing creditors when conducting alternative mortgage transactions.

State Housing Creditors' Reliance on AMTPA

1. What categories of mortgage loans were being made in reliance on AMTPA preemption prior to the Dodd-Frank Act (for example, adjustable rate mortgages, reverse mortgages, balloon loans)? What was the volume of these types of mortgage loans? Were these types of loans more prevalent in particular geographic markets (such as rural areas)? If so, which geographic markets? What types of entities made these loans?

2. To what extent did AMTPA preemption enable state housing creditors to make such loans? Do any state laws prohibit state housing creditors from making such loans? If so, please describe the background and purpose of the law and its effect on the state housing creditors' ability to make the type of loan.

3. What categories of mortgage loans are currently being made in reliance on AMTPA preemption under the interim final rule? What is the volume of these types of mortgage loans? Are these types of loans more prevalent in particular geographic locations? If so, which geographic markets? What types of entities are making these loans?

4. How many balloon loans are community and rural banks originating today to hold in portfolio? Please describe the terms of the balloon loans, including whether a written or oral commitment is made to renew the loan at expiration.

5. What role is AMTPA playing with respect to loan modifications and refinancings?

State Laws Regulating Alternative Mortgage Transactions

1. How are states currently regulating alternative mortgage transactions? Which state laws currently prohibit or restrict such transactions and how do they do so? How burdensome are any restrictions? Are these restrictions applicable to mortgage transactions generally?

2. How do state laws that regulate alternative mortgage transactions help protect consumers?

3. How have state mortgage laws changed since AMTPA was enacted, and what are the reasons for those changes?

Federal Fegulation of Alternative Mortgage Transactions

1. Should the requirements set forth in § 1004.4(a) through (c) of this interim final rule be retained? Are any modifications or additional requirements needed? To what extent do the requirements in § 1004.4(a) through (c) promote parity between federal and state housing creditors? To what extent do these requirements affect the cost of credit, consumers' access to credit, and consumer protection? To what extent do these requirements affect the burden on lenders?

2. In this interim final rule, the CFPB has used its authority under TILA to establish standards for alternative mortgage transactions. The CFPB solicits comment on whether it should utilize other authorities for establishing such standards in a permanent final rule.

VI. Section-by-Section Analysis

Section 1004.1 Authority, Purpose, Scope

This section addresses the authority, purpose, and scope of the new Part 1004, which the CFPB is issuing to implement AMTPA, as amended by Section 1083 of the Dodd-Frank Act.

(a) Authority

Section 1004.1(a) explains that Part 1004 implements AMTPA as amended by Section 1083 of the Dodd-Frank Act, pursuant to the rulemaking authority transferred to the CFPB from various transferor agencies under Section 1061

of the loan); W. Va. Code § 46A–4–110a (1996) (prohibiting balloon payments unless preempted by federal law). This footnote is included for illustrative purposes and does not constitute a determination by the CFPB that specific state laws are or are not preempted by the interim final rule.

[46] Public Law 111–203 § 1021(a).

[47] Available at *http://www.consumerfinance.gov/wp-content/uploads/2011/06/Amendments-to-the-Alternative-Mortgage-Transaction-Parity-Act.pdf.*

of the Dodd-Frank Act. This section also explains that § 1004.4 is issued based on the CFPB's authority under TILA.

(b) Purpose

Consistent with AMTPA, TILA, and the Dodd-Frank Act, § 1004.1(b) states that the purpose of Part 1004 is to balance: (1) Access to responsible credit and enhanced parity between state and federal housing creditors regarding the making, purchase, and enforcement of alternative mortgage transactions, with (2) consumer protection and the interests of the states in regulating mortgage transactions generally. The purpose of AMTPA (as defined in 12 U.S.C. 3801) is to provide parity between federal and state housing creditors ''by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with the regulations issued by the Federal agencies.'' However, as described above, the level of parity provided by AMTPA has been modified by the Dodd-Frank Act's amendments to the definition of ''alternative mortgage transaction'' and the scope of preemption under AMTPA, which narrow the range of transactions eligible for AMTPA preemption and restore the effect of certain state mortgage laws. Section 1004.1(b) reflects this modification as well as the CFPB's use of its consumer protection authority under TILA.

(c) Scope

Section 1004.1(c) states that Part 1004 applies to an alternative mortgage transaction if the creditor received an application for that transaction on or after July 22, 2011. This section further states that Part 1004 does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011.

Section 1083(c) of the Dodd-Frank Act provides that its amendments to AMTPA do not affect ''any transaction covered by the Alternative Mortgage Transaction Parity Act of 1982 (12 U.S.C. 3801 *et seq.*) and entered into on or before the designated transfer date.'' Accordingly, the CFPB must determine when a transaction is ''entered into'' for purposes of determining which preemption standards and rules—pre-Dodd-Frank Act amendments or post-Dodd-Frank Act amendments—are applicable. Rather than a single event, a mortgage transaction is a series of steps progressing from application to consummation to servicing. Each of these steps is subject to a variety of state and federal consumer protection statutes, many of which govern activities that occur prior to consummation (such as disclosure and underwriting). In order to establish a workable regulatory regime, there must be a readily identifiable date and a single set of rules to govern the entire transaction. In light of these considerations, the CFPB has interpreted an ''alternative mortgage transaction'' as being ''entered into'' on the date the application is received by the creditor. This interpretation seeks to ensure that the entire transaction is governed by a consistent set of rules. For example, if an application for a mortgage transaction is received on July 21, 2011, but is not completed on August 21, 2011, AMTPA preemption is determined under the regime in effect prior to the Dodd-Frank Act amendments. However, if the application is received on July 22, 2011, AMTPA preemption is determined under the regime established by the Dodd-Frank Act amendments and this interim final rule.

Comment 1(c)–1 clarifies that, if an application for a transaction is received by a creditor prior to July 22, 2011, whether 12 U.S.C. 3803(c) preempts state law with respect to that transaction depends on whether: (1) The transaction was an alternative mortgage transaction as defined by the version of 12 U.S.C. 3802(1) in effect at the time of application; and (2) the state housing creditor complied with applicable federal regulations issued by the OCC, NCUA, or OTS/FHLBB in effect at the time of application.

Comment 1(c)–2 clarifies that, if 12 U.S.C. 3803(c) or this interim final rule (as applicable) preempted state law at the time an application was received, certain subsequent actions with respect to that transaction are entitled to the same degree of preemption. This comment applies regardless of whether the application was received before, on, or after July 22, 2011. First, if state law was preempted at the time of application, state law is also preempted with respect to the subsequent consummation, completion, purchase, or enforcement of the transaction by a state housing creditor. This interpretation is consistent with 12 U.S.C. 3801(b) and 3803(a), which address state housing creditors' ability to ''make, purchase, or enforce'' alternative mortgage transactions.

Second, if state law was preempted at the time of application, state law is also preempted with respect to the subsequent modification, renewal, or extension of the transaction. The CFPB interprets such activity as constituting a continuation of the same ''transaction'' for purposes of AMTPA. For instance, if a distressed borrower with a variable rate mortgage loan that is currently subject to preemption under AMTPA would be able to avoid foreclosure through a modification, the CFPB believes that AMTPA should continue to preempt state law that would otherwise prohibit the modification. However, if state law was preempted at the time of application and the transaction is later satisfied and replaced by another transaction (such as through a refinancing), the second transaction must independently meet the requirements for preemption in effect at the time the second transaction is made under 12 U.S.C. 3803(c) or this interim final rule (as applicable).

This interpretation is generally similar to the statutory language that governed the transition period with regard to states that decided to opt-out of the statutory preemption regime when AMTPA was first enacted.[48] However, the interim final rule treats refinancings differently than modifications, extensions, and renewals because, as provided in 12 CFR 226.20, a refinancing constitutes a new transaction that satisfies and replaces an existing obligation. Under these circumstances, the CFPB believes that the new transaction should be evaluated independently with respect to AMTPA preemption. The CFPB seeks comment on these interpretations, particularly as to what types of modifications might otherwise be prohibited under state law and whether additional protections are needed with respect to modifications.

Section 1004.2 Definitions

(a) Alternative Mortgage Transaction

The interim final rule defines ''alternative mortgage transaction'' to include a loan, credit sale, or account: (1) That is secured by an interest in a residential structure that contains one to four units, whether or not the structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence; (2) that is made primarily for personal, family, or household purposes; and (3) in which the interest rate or finance charge may be adjusted or renegotiated.

Comment 2(a)–1 clarifies that home equity lines of credit and subordinate lien mortgages are alternative mortgage transactions as long as they meet the definition in § 1004.2(a). Comment 2(a)–

[48] 12 U.S.C. 3804(a)(2) (providing that ''any renewal, extension, refinancing, or other modification of an alternative mortgage transaction that was entered into during the preemption period'' would also be afforded AMTPA preemption).

2, discussed in more detail below, provides specific examples of transactions that are alternative mortgage transactions, while comment 2(a)–3 provides examples of transactions that are not alternative mortgage transactions.

The first element of the definition of alternative mortgage transaction is derived from AMTPA as well as the definition of a ''dwelling'' in 12 CFR 226.2(a)(19). The second element of the definition requires that an alternative mortgage transaction involve an extension of consumer credit. AMTPA's findings indicate that Congress was concerned with the availability of housing credit to consumers.[49] In addition, AMTPA applies to transactions secured by *residential* real property or a *dwelling* (including stock allocated to a dwelling in a residential cooperative housing corporation or a residential manufactured home). While some consumers may use their residence as security for credit for non-consumer purposes (such as to finance a business), AMTPA's use of the terms ''residential'' property and ''dwelling'' indicate that it is intended to apply to alternative mortgage transactions involving consumer credit. In addition, requiring alternative mortgage transactions to be consumer credit aligns the AMTPA regulations with the CFPB's general scope of authority under TILA, which also serves as authority for this interim final rule. However, the CFPB seeks comment on this issue.

The third element of the definition requires that the interest rate or finance charge for the transaction may be adjusted or renegotiated. As described above, Section 1083 narrows AMTPA's definition of an ''alternative mortgage transaction'' so that it refers only to loans and credit sales ''in which the interest rate or finance charge may be adjusted or renegotiated, [as] described and defined by applicable regulation.'' As noted above, Section 1083 deletes language that specifically included within the definition of alternative mortgage transaction: (1) Fixed-rate balloon loans ''which implicitly permit[] rate adjustments'' because the debt matures before the end of the loan's amortization schedule; and (2) mortgage loans ''involving any similar type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed rate, fixed term transactions,'' including but not limited to shared equity and shared appreciation transactions.

The interim final rule construes the amendment to exclude only those mortgages that do not involve an adjustable or renegotiable rate or finance charge. For example, a fixed-rate loan that permits the consumer to make interest-only payments for a period of time does not involve an adjustment to or renegotiation of the interest rate or finance charge. Previously, such transactions were considered alternative mortgage transactions under the third prong of the original AMTPA definition since an interest-only feature was ''not common to traditional fixed rate, fixed term transactions.''[50] Under the interim final rule, however, such transactions are no longer alternative mortgage transactions. Yet transactions that are specifically mentioned in the second and third prongs of the original AMTPA definition, such as shared-equity/shared-appreciation transactions and renewable balloon-payment transactions (which involve renegotiation of or adjustments to the rate or finance charge), *do* continue to be alternative mortgage transactions under the interim final rule. Furthermore, under the interim final rule, a mortgage with *both* an adjustable or renegotiable rate or finance charge *and* one or more other ''nontraditional'' features continues to be an ''alternative mortgage transaction.'' (However, as discussed below with respect to § 1004.3, the scope of AMTPA preemption has also been narrowed such that alternative mortgage transactions with certain nontraditional features like interest-only payments or negative amortization are subject to greater state regulation under the amended statute.)

The CFPB recognizes that the amendments to AMTPA's definition could be interpreted differently. Specifically, by eliminating references to balloon payment loans and shared-equity/shared-appreciation mortgages, the amendment could be interpreted as excluding all such transactions from the definition of an alternative mortgage transaction. In addition, the amendment removed a provision that defined alternative mortgage transactions as loans with variations to the rate, method of determining return, term, repayment, or other variations not common to traditional fixed-rate, fixed-term transactions. However, rather than attempting to identify each and every type of loan that could potentially fall under the deleted portions of the definition, the CFPB believes that, for purposes of this interim final rule, the best approach is to focus on whether particular types of transactions fit within the remaining statutory definition.

As discussed further below, the Dodd-Frank Act's amendments to both the definition of ''alternative mortgage transaction'' and to the scope of preemption under AMTPA are subject to different interpretations and are interrelated. The CFPB seeks public comment about how best to effectuate congressional intent through implementing regulations that will protect consumers, promote parity, and be readily understandable and applicable by creditors, supervising agencies, and others. The CFPB also requests comment on whether any specific types of mortgages should be excluded from the definition of an alternative mortgage transaction.

Mortgages with adjustable rates or finance charges. Comment 2(a)–2 provides specific examples of transactions that are alternative mortgage transactions.[51] Examples of alternative mortgage transactions include transactions in which the interest rate changes in accordance with changes to an index and transactions in which the interest rate may be increased or decreased after a specified period of time or under specified circumstances. For example, the definition includes loans in which the interest rate or finance charge may be adjusted after a period of time as specified and defined by the contract, for instance to provide a ''timely payment discount rate'' upon an anniversary of loan origination to borrowers who have made timely payments for a specified period of time.[52] (However, as discussed below with respect to § 1004.3, generally applicable state laws governing late charges, including increases in the interest rate due to default, are no longer preempted by AMTPA.)

The definition of ''alternative mortgage transaction'' in § 1004.2(a) includes ''variable rate transactions'' as defined under Regulation Z for purposes of providing disclosures under 12 CFR

[49] *See* 12 U.S.C. 3801(a)(1) (finding that ''increasingly volatile and dynamic changes in interest rates have seriously impaired the ability of housing creditors to provide *consumers* with fixed-term, fixed-rate credit secured by interests in real property, cooperative housing, manufactured homes, and other dwellings'' (emphasis added)).

[50] *See* OTS Letter P–2003–9 (Dec. 2, 2003).

[51] These examples are consistent with the definition of an ''adjustable rate mortgage loan'' in AMTPA, 12 U.S.C. 3806(d)(2), as one in which the loan agreement permits the creditor to adjust the rate of interest from time to time. While the definition of ''adjustable rate mortgage loan'' applies to a section of AMTPA that requires adjustable rate mortgages to have maximum interest rates (rather than to the preemption provisions), it sheds light on the types of loans contemplated by AMTPA as having adjustable rates.

[52] *See* OTS Letter P–2003–9 (Dec. 2, 2003); OTS Letter P–96–13 (Nov. 27, 1996).

226.19(b).[53] The definition is also similar to the OCC's definition of ''adjustable rate mortgage'' under its AMTPA regulations.[54]

With regard to shared appreciation and shared equity features in particular, although the Dodd-Frank Act amendments to AMTPA deleted the specific language referencing shared appreciation and shared equity mortgages, loans with these features continue to fall within the remaining definition of ''alternative mortgage transaction'' because they are mortgage transactions in which a finance charge is adjustable. Indeed, the CFPB notes that Regulation Z currently categorizes shared-equity/shared appreciation mortgages as variable-rate transactions.[55] Accordingly, consistent with that interpretation, the interim final rule includes such mortgages within the definition of alternative mortgage transaction.

The CFPB seeks comment on whether the products discussed above should be considered alternative mortgage transactions and what other products in the current market have adjustable rates or finance charges. The CFPB in particular seeks comment on whether treating a mortgage that permits a rate adjustment upon default as an alternative mortgage transaction is an appropriate approach in light of the Dodd-Frank Act amendments that specifically preserve states' authority to regulate late charges.

Mortgages with renegotiable rates or finance charges. The statute does not define what types of loans provide for the ''renegotiat[ion]'' of the interest rate or finance charge. The CFPB does not believe that Congress intended this language to apply to every transaction in which the interest rate or finance charge might theoretically be renegotiated. Such an interpretation could encompass almost any mortgage transaction. Instead, the CFPB believes it is appropriate to consider historical regulations and interpretations issued by the FHLBB and by the Federal Reserve Board under Regulation Z, both of which suggest that ''renegotiable rate mortgages'' were commonly understood at the time that AMTPA was enacted to include a subset of fixed-rate balloon loans involving renewable short-term notes secured by long-term mortgages, where the creditor made a commitment to renew the notes but reserved discretion to adjust the interest rate at renewal.[56]

This commitment to renew distinguishes renegotiable/renewable loans from a broader and more generic category of balloon loans that was included in AMTPA's original definition of ''alternative mortgage transaction,'' but was then removed from the definition by the Dodd-Frank Act amendments. That language referred to loans ''involving a fixed rate, but which implicitly permit[] rate adjustments by having the debt mature at the end of an interval shorter than the term of the amortization schedule,'' without reference or regard to renewal commitments.[57]

As discussed above, the fact that Section 1083 deleted the reference to balloon loans while retaining the reference to loans for which the interest rate or finance charge may be renegotiated creates significant ambiguity as to how balloon loans should be treated under AMTPA as amended. However, based on available information, it is unclear to what the phrase ''renegotiable rate'' in the amended AMTPA definition refers, if not to balloon loans where there is a commitment to renew the loan but the rate is subject to renegotiation.

For these reasons, the CFPB believes that, for purposes of this interim final rule, it is appropriate to construe the category of renegotiable rate loans to include fixed-rate balloon loans in which the lender has committed to renew the loan. For example, the interim final rule provides that, if a loan has, for instance, a 30-year amortization period but a balloon payment is due at the end of five years, the product is an ''alternative mortgage transaction'' for purposes of AMTPA if the creditor commits to renew the mortgage.[58] The CFPB notes that the requirement of a lender commitment to renew can help protect borrowers from the heightened default risk associated with balloon payments.[59] Furthermore, as discussed below with respect to § 1004.4(b), this commitment must be made in writing in order for the transaction to receive AMTPA preemption.

The CFPB seeks comment on all aspects of this issue, including comment on what products, if any, should be considered renegotiable rate loans, how commitments to renew are typically structured, and whether further clarity or protections may be appropriate for these mortgage products.

Adjustable or renegotiable rate loans with additional nontraditional features. As noted above, the interim final rule defines ''alternative mortgage transaction'' by focusing on the language of the amended statutory definition—in other words, whether the loan has an adjustable or renegotiable rate or finance charge. It is unclear whether the deletion of AMTPA's language recognizing other nontraditional loan features such as negative amortization or interest-only payment periods was intended to exclude adjustable rate or renegotiable rate loans that also contain such features from AMTPA preemption. For purposes of the interim final rule, the CFPB has concluded that such loans should not be excluded, for several reasons.

First, a broader exclusion based on the absence of statutory text would create a number of practical difficulties. The definitions removed from AMTPA mention two specific loan types—balloon loans and shared-equity/shared-appreciation loans—which can, in certain circumstances, be loans with adjustable or renegotiable rates or

[53] As discussed below, Regulation Z also treats renewable balloon payment loans as variable rate transactions. See 12 CFR 226.17 comment 17(b)–11.

[54] *See* 12 CFR 34.20, 34.24 (authorizing state chartered banks to make ''adjustable rate mortgages,'' defined generally to include secured extensions of credit ''where the lender, pursuant to an agreement with the borrower, may adjust the rate of interest from time to time'').

[55] *See* 12 CFR 226 comment 17(c)(1)–11.

[56] *See, e.g.*, 45 FR 24,108 (Apr. 9, 1980). The FHLBB initially provided very detailed rules regarding renegotiable rate mortgages, which were subsumed into regulations on adjustable rate mortgages at 46 FR 24,148 (Apr. 30, 1981). The Federal Reserve also has moved from a narrower definition of ''renegotiable rate mortgages'' to a broader category of ''renewable'' balloon loans. *Compare* 66 Fed.Res.Bull. 830 (Oct. 1980) (defining ''renegotiable rate mortgages'' to include fixed-rate balloon loan mortgages for which the lender was obliged to renew the loan upon expiration of the loan on the same credit terms except for a change in the interest rate, and interpreting Regulation Z to permit lenders to disclose such mortgages either as a variable-rate obligation under 12 CFR 226.8(b)(8) or as a balloon-payment obligation under 12 CFR 226.8(b)(3)), *with* 56 FR 13751, 13754 (Apr. 4, 1991) (dropping the term ''renegotiable rate mortgage'' in favor of a more generic category of renewable loans with balloon payments, where the creditor is either unconditionally obligated to renew the loan or obligated to renew subject only to conditions within the consumer's control, and requiring that such loans be disclosed as long-term variable rate loans rather than as short-term balloon loans).

[57] 12 U.S.C. 3802(1)(B).

[58] This approach is also consistent with the OCC's regulations applicable to AMTPA loans, which define ''adjustable rate mortgages'' to exclude ''fixed-rate extensions of credit that are payable at the end of a term that, when added to any terms for which the bank has promised to renew the loan, is shorter than the term of the amortization schedule.'' 12 CFR 34.20. Thus, if the bank promises to renew the loan for the term of the amortization schedule, the loan fell within the OCC's definition of ''adjustable rate mortgage.''

[59] See, *e.g.*, Roberto G. Quercia, Michael A. Stegman & Walter Davis, *The impact of predatory loan terms on subprime foreclosures: The special case of prepayment penalties and balloon payments,* 18 Housing Pol'y Debate 311 (2007) (finding that first-lien subprime refinance mortgage loans with balloon payments in general were 50% more likely to go into foreclosure than other loans, holding other factors constant).

finance charges, as discussed above. While this amendment could be interpreted as having been intended to exclude these products from AMTPA coverage entirely, there is no specific language in the amended statute that provides guidance as to why such products would no longer be considered loans with adjustable or renegotiable rates or finance charges, regardless of the other aspects of the loan. In addition, the definitions removed by the Dodd-Frank Act amendments were quite broad and vague and overlap substantially with the other definitions.[60] Accordingly, interpreting the amendments to exclude from AMTPA coverage any transactions described in the removed definitions could undermine the remaining definition.

Second, where unusual circumstances require publication of an interim rule to take immediate effect without advance notice and opportunity for comment, the CFPB believes that it is appropriate to minimize market disruption while the CFPB's notice-and-comment rulemaking is under way. Thus, it is appropriate to interpret the remaining definition of ''alternative mortgage transaction'' broadly.

The CFPB also believes it is particularly important to consider the interaction between the Dodd-Frank Act's definitional changes (implemented in § 1004.2) and changes to the scope of preemption (implemented in § 1004.3). Under the definition adopted in the interim final rule, fixed-rate products involving negative amortization, interest-only periods, or graduated payment features do not meet the definition of ''alternative mortgage transaction'' because they are not loans with adjustable or renegotiable rates or finance charges. Therefore, these types of loans are not eligible for federal preemption under AMTPA and instead are subject to applicable state law.

In contrast, loans containing the same features that also have adjustable or renegotiable rates or finance charges *would* continue to qualify as ''alternative mortgage transactions'' under the definition in § 1004.2(a). However, state law is preempted with respect to such loans only to the extent provided in § 1004.3 (and only if the transaction also complies with the requirements in § 1004.4(a) through (c), as applicable). Thus, to the extent that a state has enacted a law regulating, for example, negative amortization or interest-only features, AMTPA would not preempt application of that law to an alternative mortgage transaction.

In addition, although the alternative mortgage transaction *definition* includes loans in which the contract permits the creditor to adjust the interest rate or finance charge upon default, applicable state laws governing late charges are not preempted under § 1004.3. Accordingly, like the statute, the two parts of the interim final rule work in conjunction with each other to provide for more consistent application of state law across similar mortgage products.

The CFPB seeks comment not just about the specific definitional changes but also how those changes relate to the new scope of preemption as further discussed below.

(b) Creditor

The term ''creditor'' is defined to have the same meaning as under Regulation Z, 12 CFR 226.2. This reflects the fact that § 1004.4 of the interim final rule applies broadly to all ''creditors'' as defined under and pursuant to TILA and Regulation Z when such creditors are engaged in the making of alternative mortgage transactions. Comment 2(b)–1 clarifies that, under Regulation Z, the term ''creditor'' includes federally and state-chartered banks, thrifts, and credit unions, as well as non-depository institutions (such as state-licensed lenders). The comment also references the Official Staff Commentary to Regulation Z for additional guidance on the definition of the term ''creditor.''

(c) Housing Creditor

The definition of ''housing creditor'' generally mirrors the statutory language to include a depository institution as defined in 12 U.S.C. 1735f–7 note; a lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act; other persons who regularly make loans, credit sales, or advances secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence; and any transferee of a person in the other three categories.

(d) State

The term ''State'' is defined as a state of the United States, the District of Columbia, and U.S. territories and possessions, including Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, and Guam. This is generally consistent with the federal prudential agencies' regulations as well as the definition of ''State'' in various other federal consumer financial regulations.[61]

(e) State Law

Consistent with 12 U.S.C. 3803, the term ''State law'' is defined as a State constitution, statute, or regulation or any provision thereof.

Section 1004.3 Preemption of State law.

Section 1004.3 provides that a state housing creditor may make, purchase, and enforce alternative mortgage transactions in accordance with the requirements of § 1004.4(a) through (c) (as applicable), notwithstanding any provision of State law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge with respect to the transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation. This regulation generally tracks the language and structure of 12 U.S.C. 3803, as amended by the Dodd-Frank Act. However, in order to implement the purposes of the Dodd-Frank Act's amendments to AMTPA, § 1004.3 interprets and clarifies the amended preemption standard in 12 U.S.C. 3803(c) in several respects.

As an initial matter, the amendments to 12 U.S.C. 3803(c) narrowed the scope of preemption to apply only to state laws that ''*prohibit*[] an alternative mortgage transaction.''[62] Although it is unclear from the statutory text what types of state laws prohibit alternative mortgage transactions for purposes of AMTPA, the amendments to 12 U.S.C. 3803(c) clarify that an alternative mortgage transaction is not prohibited by a state law that ''regulates mortgage transactions generally, including any restriction on prepayment penalties or late charges.''[63]

Neither AMTPA nor the Dodd-Frank Act specifically define the term ''prohibit.'' However, that term is generally understood to mean forbid by law or to otherwise prevent or hinder an activity.[64] Furthermore, the purpose of

[60] *See* 12 U.S.C. 3802(1)(C) (referring to loans ''involving any *similar* type of rate, method of determining return, term, repayment, or other variation not common to traditional fixed rate, fixed term transactions, including without limitation, transactions that involve the sharing of equity or appreciation'') (emphasis added).

[61] *See, e.g.,* 12 CFR 561.50; 12 CFR 563f.2; 12 CFR 700.2.

[62] Public Law 111–203, § 1083(a)(2)(B) (emphasis added).

[63] *Id.*

[64] *See, e.g.,* Webster's New World Dictionary 1075 (3d College ed. 1991) (''1 to refuse to permit; forbid by law or by an order 2 to prevent; hinder''); Black's Law Dictionary 1331 (9th ed. 2009) (''Prohibit, vb. 1. To forbid by law. 2. To prevent or hinder.'').

AMTPA remains providing state housing creditors ''with parity with federally chartered institutions by authorizing all housing creditors to make, purchase, and enforce alternative mortgage transactions so long as the transactions are in conformity with [federal] regulations. * * * ''[65] This purpose would be thwarted if AMTPA were interpreted not to preempt state laws imposing restrictions on state housing creditors' ability to adjust interest rates and finance charges where such restrictions do not apply to federal housing creditors, as the ability to make such adjustments is integral to alternative mortgage transactions. Accordingly, because 12 U.S.C. 3802(1) defines an alternative mortgage transaction as a transaction ''in which the interest rate or finance charge may be adjusted or renegotiated,'' the interim final rule construes ''prohibit'' to include not only state laws banning the making, purchase, or enforcement of alternative mortgage transactions, but also state laws that restrict or hinder the adjustment or renegotiation of an interest rate or finance charge. For example, as explained in comment 2, state laws are preempted to the extent that they restrict the circumstances under which a rate may be adjusted, the method by which a rate may be adjusted, or the amount of a rate adjustment.

Similarly, § 1004.3 provides that state laws are preempted with respect to alternative mortgage transactions to the extent that they restrict the ability of a state housing creditor to change the amount of a payment to include increased interest or finance charges as a result of the adjustment or renegotiation of an interest rate or finance charge. The CFPB believes that such changes to payment amounts are also integral to alternative mortgage transactions. Indeed, if housing creditors were not permitted to increase the payment amount to account for an increase in the interest rate, the transaction could negatively amortize, which would be harmful to some consumers.[66]

Comment 1 clarifies that, regardless of whether a state law applies solely to alternative mortgage transactions or applies to both alternative mortgage transactions and other mortgage or consumer credit transactions, that law is preempted by § 1004.3 to the extent that it restricts the ability of a state housing creditor to adjust or renegotiate an interest rate or finance charge with respect to an alternative mortgage transaction or to adjust payments as a result of such an adjustment or renegotiation. Thus, the preemption regime under § 1004.3 is not tied to whether a state law by its terms applies solely to alternative mortgage transactions.

Although the amendments to 12 U.S.C. 3803(c) indicate that state laws that regulate mortgage transactions generally are not preempted, the CFPB believes that narrowly focusing on whether a state law is by its terms general or specific would undermine the key determination of whether a state law *prohibits* an alternative mortgage transaction's adjustment or renegotiation of an interest rate or finance charge or changes to payments as a result of the adjustment or renegotiation. For example, applying preemption to any state law that specifically addresses alternative mortgage transactions would preempt state laws that do not prohibit alternative mortgage transactions because they do not forbid, prevent, or hinder the ability of the state housing creditor to make such transactions (such as a state law requiring that certain disclosures be provided regarding alternative mortgage transactions). Furthermore, this approach would shield from preemption state laws that might be couched in general terms but effectively prohibit an alternative mortgage transaction (for example, a law prohibiting increases in an interest rate based on increases in an index). Finally, focusing solely on whether a state law is specific to alternative mortgage transactions or more general in its terms could lead to anomalous results if, for example, one state prohibited certain conduct in a statute that specifically applied to alternative mortgage transactions while another state prohibited the same conduct in a statute that applied generally to all mortgage transactions. For these reasons, the CFPB believes that it would be inconsistent with the goals of the Dodd-Frank Act amendments to make AMTPA preemption determinations based solely on whether a state law was specific or general by its terms.

Comment 2 also clarifies that state law restrictions on shared equity or shared appreciation transactions in which the creditor and the consumer share some or all of the appreciation in the value of the property are preempted by § 1004.3. As discussed above, such transactions are alternative mortgage transactions under § 1004.2(a). However, the CFPB solicits comment on whether additional protections are needed with respect to these types of transactions. The CFPB also solicits comment on the volume of these transactions.

In addition, comment 2 clarifies that state law underwriting requirements are preempted by § 1004.3 to the extent that they effectively restrict the adjustment or renegotiation of interest rates or finance charges or changes in payments as a result of such adjustments or renegotiations. For example, if a state law requires housing creditors to underwrite based on the maximum contractual rate, that particular provision of the law is preempted by § 1004.3 with respect to alternative mortgage transactions, regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions. In contrast, state underwriting requirements of general applicability that do not impact the adjustment or renegotiation of interest rates or finance charges or changes in payments as a result of such adjustments or renegotiations are not preempted. (However, as discussed below, § 1004.4(c) requires state housing creditors that invoke AMTPA preemption to comply Regulation Z's underwriting requirements for high-cost and higher-cost mortgages.)

In contrast, comment 3 provides examples of state laws that are not preempted by § 1004.3 because they do not restrict the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge or to change the amount of a payment as a result of such an adjustment or renegotiation. In particular, the comment states that, consistent with the amended 12 U.S.C. 3803(c), state law restrictions on prepayment penalties and late charges are not preempted by § 1004.3 regardless of whether the restriction applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions. Such a restriction does not prohibit or hinder a feature integral to an alternative mortgage transaction. The comment further clarifies that an increase in an interest rate or finance charge as a result of a late payment is a late charge for purposes of § 1004.3. Therefore, a state law that prohibits state housing creditors from increasing a consumer's interest rate as a result of a late payment is not preempted by § 1004.3.

In addition, comment 3 clarifies that state law restrictions on transactions in which one or more of the regular periodic payments may result in an

[65] 12 U.S.C. 3801(b).

[66] However, as explained in comment 2, other state law restrictions on changes to payments are not preempted by § 1004.3.

increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature) are not preempted by § 1004.3. The comment also clarifies that state law disclosure requirements are not preempted by § 1004.3 regardless of whether the law applies specifically to alternative mortgage transactions because disclosure requirements do not prohibit a state housing creditor from adjusting or renegotiating an interest rate or finance charge or making a corresponding change to a payment. Finally, the CFPB notes that, as a general matter, state laws prohibiting unfair or deceptive acts or practices are not preempted under 12 U.S.C. 3803(c) or this interim final rule.

The CFPB seeks comment on all aspects of § 1004.3(b) and on whether particular state laws should or should not be subject to AMTPA preemption. The CFPB notes, however, that nothing in this interim final rule affects the preemption of state law under provisions of federal law other than AMTPA.

Section 1004.4 Requirements for Alternative Mortgage Transactions

Section 1083 of the Dodd-Frank Act requires the CFPB to promulgate its own regulations governing alternative mortgage transactions after the designated transfer date. The CFPB is also required to review and determine whether the regulations governing alternative mortgage transactions designated by the OCC and NCUA pursuant to AMTPA are ''fair, not deceptive, and consistent with the purposes of [title X of the Dodd-Frank Act].'' [67] The CFPB believes that it is consistent with the intent and purpose of Section 1083 to interpret this provision as requiring the CFPB to determine whether the OCC and NCUA regulations are effective in *preventing* unfair or deceptive practices. In addition, although this provision does not require the CFPB to review OTS AMTPA regulations, the CFPB believes that it is appropriate to do so in order to predict potential impacts on the marketplace.

Accordingly, the CFPB has completed an initial review of the regulations designated by the OCC, NCUA, and OTS as well as agency interpretive guidance, available court decisions, and secondary sources. Based on this review, the CFPB has made a preliminary determination that certain of those regulations are necessary to prevent unfairness and deception and are consistent with the purposes of title X of the Dodd-Frank Act. The CFPB has adopted those regulations in modified form in § 1004.4(a) and (b) of the interim final rule. However, the CFPB believes that additional research, consultation, and comment are needed before adoption of a permanent final rule. The CFPB therefore seeks comment on whether the requirements in § 1004.4 are sufficient to prevent unfair or deceptive acts or practices, whether modifications to those requirements are appropriate, and whether additional protections are needed.

As discussed above, the CFPB is issuing § 1004.4 pursuant to its authority under TILA, which applies to all ''creditors'' as defined by Regulation Z. Thus, § 1004.4 applies to all federal and state housing creditors that make alternative mortgage transactions. However, because there has not yet been an opportunity for notice and comment on the requirements in § 1004.4(a) through (c), the CFPB has delayed mandatory compliance with § 1004.4 until July 21, 2012 for federal housing creditors and for state housing creditors that are not relying on preemption of state law under § 1004.3. Accordingly, only state housing creditors that choose to seek AMTPA preemption under § 1004.3 are required to comply with § 1004.4 before July 22, 2012.[68]

The CFPB's interim final rule is designed to protect consumers and preserve access to credit and federal-state parity while also providing an orderly transition period while the notice-and-comment rulemaking process occurs. Because the OCC, NCUA, and OTS AMTPA rules vary significantly in substance and scope and because the CFPB's rules must account for the Dodd-Frank Act amendments to AMTPA, the CFPB has concluded that it would not be practicable or appropriate to simply replicate the three pre-existing sets of regulations in the CFPB's interim final rule. However, the CFPB has adopted standards and language that are comparable to central elements of those regulations where it was consistent with the Dodd-Frank Act and otherwise appropriate to do so.

The CFPB did consider simply requiring state housing creditors to comply with all requirements of federal law in order to receive AMTPA preemption. However, because state housing creditors are already required to comply with TILA and other applicable provisions of federal law that fall within the CFPB's authority, such an approach would be redundant and unnecessary and could cause confusion regarding the scope of preemption under § 1004.3. Instead, as discussed below, that CFPB has designated specific provisions of Regulation Z in § 1004.4.

The CFPB notes that AMTPA provides an opportunity to cure violations of federal alternative mortgage transaction regulations that may be helpful to state housing creditors as they make adjustments necessary to comply with the interim final rule. Specifically, 12 U.S.C. 3803(b) provides that, where a state housing creditor has failed to comply with the alternative mortgage transaction regulations for federally chartered housing creditors, an alternative mortgage transaction will nonetheless be deemed to be made in accordance with the applicable regulation if: ''(1) The transaction is in substantial compliance with the regulation; and (2) within sixty days of discovering any error the housing creditor corrects such error, including making appropriate adjustments, if any, to the account.''

(a) Adjustable rate mortgages.

Section 1004.4(a) of the interim final rule provides standards by which creditors making alternative mortgage transactions with adjustable rates or finance charges may increase the interest rate or finance charge. To rely on AMTPA's preemption provision, creditors making alternative mortgage transactions that are open-end home equity lines of credit subject to the Regulation Z requirements in 12 CFR 226.5b must comply with § 226.5b's requirement that changes in the annual percentage rate be made according to a publicly available index that is not subject to the creditor's control.

For closed-end alternative mortgage transactions involving an adjustable rate or finance charge, the interim final rule provides that adjustments must be made based on either: (1) an index outside the creditor's control to which changes in the interest rate are tied; or (2) a formula or schedule identifying the amount by which the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made. The content of these rules is similar to the OCC and OTS regulations for national banks and federal thrifts, respectively, that were previously designated as applicable to

[67] Public Law 111–203, § 1083(b).

[68] As discussed below, however, nothing in Part 1004 alters the obligation of all creditors to continue to comply with the requirements of Regulation Z that are incorporated by reference in § 1004.4 (specifically, 12 CFR 226.5b, 12 CFR 226.32, 12 CFR 226.34, and 12 CFR 226.35, as applicable).

state housing creditors under AMTPA.[69] Pursuant to its authority under Section 1405(a) of the Dodd-Frank Act (15 U.S.C. 1639b(e)(1)), the CFPB finds that the adoption of the standards in § 1004.4(a) as part of this interim final rule is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers. Nevertheless, the CFPB seeks comment on whether additional or different requirements are more appropriate to protect consumers and promote parity between federal and state housing creditors.

Comment 4(a)–1 clarifies that a creditor may use any measure of index values that meets the requirements in § 1004.4(a)(2)(i). For example, the index may be either single values as of a specific date or an average of values calculated over a specified period.

Comment 4(a)–2 clarifies that an index is not beyond the creditor's control if the index is the creditor's own prime rate or cost of funds. A creditor is permitted to use a published prime rate, such as the prime rate published in the *Wall Street Journal*.[70] The CFPB notes that, in other contexts, the Federal Reserve Board has concluded that a creditor's use of ''rate floors'' (in other words, minimum values below which the interest rate will not fall regardless of the index value) constituted control over the operation of an index.[71] Although the CFPB has not adopted that interpretation in this interim final rule, it seeks comment on whether it is appropriate to do so in a permanent final regulation implementing the amendments to AMTPA.

Comment 4(a)–3 clarifies that a publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the alternative mortgage transaction.[72]

(b) Renegotiable rates for balloon-payment mortgages.

Renegotiable rates and renewable balloon-payment mortgages were not specifically discussed in the mortgage rules previously designated as applicable to state housing creditors under AMTPA by the OCC, NCUA, and OTS. However, pursuant to its authority under Section 1405(a) of the Dodd-Frank Act (15 U.S.C. 1639b(e)(1)), the CFPB finds that adoption of the standards in § 1004.4(b) as part of this interim final rule is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers.

As discussed above, a renewable balloon-payment mortgage is generally a transaction in which payments are based on an amortization period and a large final payment is due after a shorter term, but the borrower has the option to renew the transaction at specified intervals throughout the amortization period at the interest rate offered by the creditor at the time of renewal.[73] To rely on AMTPA's preemption provision, creditors making such transactions must provide a written commitment to renew the transaction at specified intervals throughout the amortization period. Under the terms of the written commitment, the creditor may negotiate an increase or decrease in the interest rate at renewal.

The CFPB believes that a written commitment is necessary to ensure that balloon-payment mortgages made under AMTPA are provided responsibly. However, the CFPB also believes that, based on safety and soundness and other considerations, creditors should not be required to renew the loan in certain limited circumstances. Accordingly, the CFPB has adopted exceptions to the renewal requirement based on the exceptions in 12 CFR 226.5b(f)(2), which permit a creditor to terminate a home-equity line of credit and demand payment of the outstanding balance. The CFPB has modified the § 226.5b(f)(2) exceptions to ensure that a creditor generally cannot decline to renew a balloon-payment loan under § 1004.4(b) unless there has been a material change in circumstance.

Therefore, § 1004.4(b) provides that the creditor is not required to renew the transaction if: (1) Any action or inaction by the consumer materially and adversely affects the creditor's security for the transaction or any right of the creditor in such security; (2) there is a material failure by the consumer to meet the repayment terms of the transaction; (3) there is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or (4) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

The CFPB seeks comment on whether the written commitment requirement and the exceptions in § 1004.4(b) are appropriate to protect consumers, promote access to responsible credit, and enhance parity between federal and state housing creditors.

(c) Requirements for High-Cost and Higher-Priced Mortgage Loans

Section 1004.4(c) provides that, if an alternative mortgage transaction is a ''high-cost'' loan subject to 12 CFR 226.32, the creditor must comply with 12 CFR 226.32 and 12 CFR 226.34. In addition, if an alternative mortgage transaction is a ''higher-priced mortgage loan'' subject to 12 CFR 226.35, the creditor must comply with 12 CFR 226.35. These provisions of Regulation Z contain underwriting requirements and restrictions on loan terms for certain types of loans with higher costs. Because the interim final rule preempts some state underwriting requirements, the CFPB believes it is appropriate to require creditors to comply with these provisions in order to obtain that preemption.[74] Pursuant to its authority under Section 1405(a) of the Dodd-Frank Act (15 U.S.C. 1639b(e)(1)), the CFPB finds that the adoption of § 1004.4(c) as part of this interim final rule is necessary and proper to ensure that responsible, affordable mortgage credit remains available to consumers.

Comment 1004.3(c)–1 clarifies that creditors must comply with the restrictions on prepayment penalties in Regulation Z, if applicable. However, as discussed above, creditors are *not* exempt under AMTPA and § 1004.3 from state laws regarding prepayment penalties. Thus, with respect to prepayment penalties, creditors must comply with both Regulation Z and with state law unless another basis for preemption exists (such as because the state law is inconsistent with Regulation Z).[75] For example, if a loan is a higher-priced mortgage loan under 12 CFR 226.35, it may not have a prepayment penalty unless the penalty expires within two years after consummation.[76] However, if a state law prohibited prepayment penalties unless the penalty expires within one year, that state law would not be preempted by AMTPA (or by Regulation Z).

The CFPB seeks comment on the inclusion of these requirements in § 1004.4(c) and on whether additional underwriting requirements are warranted. In particular, the CFPB requests comment on whether, once the

[69] 12 CFR 34.20–25; 12 CFR 560.220.

[70] *See* 12 CFR 226.5b comment 5b(f)(1)–1.

[71] *See* 12 CFR 226.55(b)(2) comment 55(b)(2)–2.

[72] *See* 12 CFR 226.5b comment 5b(f)(1)–2

[73] See 12 CFR 226.17 comment 17(b)–11.

[74] Because 12 CFR 226.32, 12 CFR 226.34, and 12 CFR 226.35 already apply to all creditors, all creditors must continue to comply with those provisions, regardless of whether they seek AMTPA preemption.

[75] *See* 12 CFR 226.28.

[76] 12 CFR 226.35(b)(2)(ii)(A).

regulations implementing the ability-to-pay requirements in TILA Section 129C (15 U.S.C. 1639c) are finalized, all or part of those regulations should be incorporated into § 1004.4(c).

(d) Other Applicable Law

Because § 1004.4 applies to all creditors on July 22, 2012, the interim final rule provides § 1004.4(d) as an alternative to compliance with § 1004.4(a) through (c) for creditors that do not seek preemption under § 1004.3. Specifically, § 1004.4(d) permits a housing creditor that is not making an alternative mortgage transaction pursuant to § 1004.3 to make that transaction consistent with applicable state or federal law other than § 1004.4. Thus, for example, a state housing creditor that does not invoke AMTPA preemption can make an alternative mortgage transaction consistent with applicable state law as well as applicable federal law other than § 1004.4. Similarly, a federally chartered housing creditor can make an alternative mortgage transaction consistent with federal law other than § 1004.4 (including any requirements imposed by the chartering agency and the requirements for high-cost and higher-priced mortgage loans found in 12 CFR 226.32, 12 CFR 226.34, and 12 CFR 226.35) as well as any applicable state law.

Particularly in view of the fact that this interim final rule is being published without notice and comment, the CFPB believes that this provision is necessary and appropriate to enable housing creditors that are not using AMTPA preemption to make alternative mortgage transactions to continue making such transactions in accordance with applicable federal or state standards. The CFPB believes that this interim final rule strikes an appropriate short-term balance that will promote greater parity between federal and state housing creditors, continued access to credit on currently-available terms, and consumer protection while reflecting the narrowed scope of AMTPA preemption under the Dodd-Frank Act. The CFPB seeks comment on both the short-term impacts of this provision and on potential long-term standards under § 1004.4 that would apply to all creditors or a defined subset of creditors. In addition, the CFPB seeks comment on whether it should utilize sources of statutory authority other than TILA to issue regulations governing alternative mortgage transactions.

Comment 4(d)–1 clarifies that § 1004.4(d) does not exempt housing creditors that do not seek preemption under § 1004.3 from complying with provisions of federal law that are incorporated by reference in § 1004.4. Specifically, nothing in § 1004.4(d) exempts a housing creditor from complying with 12 CFR 226.5b, 226.32, 226.34, or 226.35.

(e) Reductions in interest rate or finance charge.

Section 1004.4(e) of the interim final rule provides that a creditor may always decrease the interest rate or finance charge on an alternative mortgage transaction without violating § 1004.4. The OCC regulations that are designated as applicable to state housing creditors contain a similar provision, and the CFPB believes it is appropriate to replicate that provision here because interest rate and finance charge reductions are beneficial to consumers.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities including small businesses, small governmental units, and small not-for-profit organizations.[77] The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The CFPB is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives regarding any rule for which an IRFA is required.

The RFA requirements do not apply in cases in which an agency finds good cause to issue an interim final rule without a notice of proposed rulemaking.[78] As discussed above in Section IV, the CFPB has made such a finding. Moreover, the CFPB believes that any delay in the issuance of the interim final rule would be contrary to the interests of small businesses, since the ability of small state housing creditors to make alternative mortgage transactions under AMTPA would be suspended while the CFPB assessed impacts and completed any other applicable requirements. The CFPB notes that the interim final rule is specifically designed to reduce the amount of disruption from implementation of the statutory amendments by adopting requirements that are generally consistent with the existing regulations issued by the federal prudential agencies to the extent permitted under the Dodd-Frank Act amendments to AMTPA and by providing a delayed mandatory compliance date and safe harbor for small federally chartered and state chartered lenders that are not making loans under AMTPA but may be affected by the broader long-term rulemaking.

The CFPB takes its responsibilities under the Regulatory Flexibility Act seriously and is in the process of refining its long-term policies, procedures, and methodologies for conducting impact analyses as required by the statute. The CFPB expects to apply these enhanced processes when complying with all applicable requirements as part of its future notice-and-comment rulemaking under AMTPA. In advance of issuing this interim final rule, the CFPB issued a public bulletin alerting state chartered and licensed lenders and other interested parties that: (1) the Dodd-Frank Act amendments to AMTPA take effect on July 21, 2011; and (2) the amendments affect what laws apply to mortgage loans issued by state chartered or licensed lenders after that date by narrowing the statutory definition of ''alternative mortgage transaction'' and the scope of preemption under AMTPA.[79] The CFPB has also conducted outreach with trade associations, state and federal regulators, and consumer advocates to call attention to the Dodd-Frank Act's amendments to AMTPA and to urge planning for an orderly transition period.

Because limited information exists concerning AMTPA activity, the CFPB requests comment and data regarding the amount of activity under the statute prior to the Dodd-Frank Act amendments, the impact of the OCC, NCUA, and OTS regulations, and the impact of the statutory amendments and the interim final rule. All of these topics will help the CFPB in assessing the potential economic impacts on small lenders as it prepares to propose a permanent final rule.

VIII. Paperwork Reduction Act

The CFPB has determined that this interim final rule does not impose any new recordkeeping or reporting

[77] 5 U.S.C. 601 *et seq.*

[78] 5 U.S.C. 553(b)(B); 5 U.S.C. 605(b); 62 FR 23,538 (April 30, 1997); 66 FR 37,752 (July 19, 2001); 64 FR 3,865 (Jan. 26, 1999).

[79] Available at *http://www.consumerfinance.gov/wp-content/uploads/2011/06/Amendments-to-the-Alternative-Mortgage-Transaction-Parity-Act.pdf.*

requirements on state housing creditors, states, or members of the public that would be collections of information requiring approval under 44 U.S.C. 3501, *et seq.*

IX. Dodd-Frank Act Section 1022(b)(2)

The CFPB has conducted an analysis of benefits, costs, and impacts of this interim final rule and consulted with the prudential regulators, the Federal Trade Commission, and the Department of Housing and Urban Development.[80] In preparing a notice of proposed rulemaking following the issuance of this interim final rule, the CFPB plans to perform additional analysis and engage in further consultations consistent with Section 1022(b)(2).[81]

In the absence of the interim final rule, the provisions of the Dodd-Frank Act would, by themselves, impact portions of the mortgage market. As discussed previously, the Dodd-Frank Act requires state housing creditors to comply with CFPB regulations in order to invoke AMTPA preemption for alternative mortgage transactions entered into after July 21, 2011. Accordingly, if the CFPB did not adopt regulations that took immediate effect on July 22, AMTPA preemption would cease to apply and the affected state housing creditors would be subject to applicable state law. In states where alternative mortgage transactions are prohibited, state housing creditors who were affected would no longer be able to make—and consumers would no longer be able to obtain—those forms of credit. Furthermore, in states where alternative mortgage transactions are regulated but not prohibited, affected state housing creditors would either choose to cease making such transactions in order to avoid the cost of compliance or have to incur those costs. In the absence of an interim final rule, consumers would receive the benefits of the application of state consumer protection laws while losing the benefits of a countervailing federal consumer protection rule under AMTPA and most likely experiencing an increase in the cost and/or a reduction in the availability of credit.[82]

The benefits, costs, and impacts of the interim final rule can be measured against this baseline scenario which assumes that the Dodd-Frank Act amendments have taken effect and preemption is not in force since no interim rule exists. Relative to this scenario, the interim final rule allows preemption of certain state laws and provides federal consumer protection standards governing certain terms in alternative mortgage transactions as a condition required before federal preemption is triggered. Importantly, the interim final rule also allows creditors not seeking to invoke federal preemption under AMTPA to continue making alternative mortgage transactions under other sources of federal law or relevant state laws, as applicable. Furthermore, while compliance with this interim final rule is mandatory for state housing creditors that choose to invoke federal preemption under AMTPA, compliance with the requirements for alternative mortgage transactions in § 1004.4 of this rule is optional for other creditors until July 22, 2012. In addition, after July 22, 2012, creditors who are not seeking AMTPA preemption may comply with other applicable law rather than the requirements of this interim final rule.

As a result, any potential benefits and costs from the interim final rule are limited to alternative mortgage transactions, issued by state housing creditors, that would not be permissible under applicable state law but for AMTPA's preemption of state restrictions or requirements or where the lender chooses to issue the mortgage under AMTPA preemption. Lenders choosing to make such mortgages using AMTPA preemption will incur the cost of complying with the requirements of the interim final rule. On the other hand, to the extent that making alternative mortgage transactions that would otherwise be prohibited or regulated by state law is profitable to lenders, they will benefit from the ability to make these loans under the interim final rule and from any cost savings from avoiding the preempted state requirements. Consumers will benefit from the provisions of the interim final rule and any increased availability or lowered price for credit at the cost of decreased consumer protections from state regulation.[83]

The CFPB notes that the interim final rule does not apply to mortgage transactions that the Dodd-Frank Act has excluded from the statutory definition of ''alternative mortgage transaction,'' as discussed above. For these loans, state housing creditors can no longer invoke AMTPA preemption and therefore the costs and benefits just described are not relevant. Such mortgages include fixed-rate mortgage loans with interest-only payment periods or negative amortization features, fixed-rate balloon loans where the lender does not make a commitment to renew the loan, and certain other products that previously fit within the statutory definition.

In order to estimate the potential costs and benefits of the interim final rule, the CFPB has examined various data sources and consulted with industry and consumer representatives, market participants, and other regulators. To date, the CFPB has found no comprehensive data from either regulatory or private sources to determine the number, value, location, or type of originator of mortgages originated specifically using AMTPA preemption. Available data indicate that variable rate mortgages comprised approximately 12 percent of mortgage originations in the first quarter of 2011. However, this figure overstates the percentage of transactions made by state housing creditors under AMTPA preemption because it includes transactions made by federally chartered housing creditors, transactions made by state housing creditors under some other form of preemption or state parity law, and transactions made by state housing creditors under state law. Still, with a significant number of states imposing restrictions on the size, frequency, or timing of interest rate and payment adjustments and renegotiations, the CFPB expects there are some markets where the volume of mortgages made using AMTPA preemption may be significant. The CFPB seeks comment on available sources of information to better evaluate the potential benefits and costs of AMTPA implementing rules.

[80] The President's July 11, 2011, Executive Order 13579 entitled ''Regulation and Independent Regulatory Agencies,'' asks the independent agencies to follow the cost-saving, burden-reducing principles in Executive Order 13563; harmonization and simplification of rules; flexible approaches that reduce costs; and scientific integrity. In the spirit of Executive Order 13563, the CFPB has consulted with the Office of Management and Budget regarding this interim final rule, including with respect to the CFPB's methodologies and analysis regarding the potential benefits, costs, and impacts of the rule.

[81] Section 1022(b)(2)(A) calls for consideration of the potential benefits and costs of regulation to consumers and industry, including the potential reduction of access by consumers to consumer financial products or services; the impact of proposed rules on depository institutions and credit unions with $10 billion or less in total assets as described in Section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas. The CFPB is in the process of further developing its long-term policies and procedures in this area and evaluating potential methodologies for conducting impact analyses as required by the statute.

[82] The sudden change in the nature of the regulatory environment and the short term market disruptions that would ensue in the absence of the interim final rule would lead to additional costs as well.

[83] Intangible effects, such as the increase in state autonomy inherent in reducing the scope of preemption, are beyond the scope of the current discussion.

A. Potential Benefits and Costs to Consumers and Covered Persons, Including any Potential Reduction of Access by Consumers to Consumer Financial Products or Services

As described above, the interim final rule specifies requirements for mortgages made using AMTPA preemption, including loans with variable or adjustable rates, shared equity or shared appreciation loans, and fixed-rate balloon loans where the creditor commits to renewing the loan. These include requirements for the index used for adjustable rate mortgages, certain loan terms regarding renewal commitments for balloon mortgages, and underwriting requirements for high-cost and higher-priced mortgage loans.[84] The potential benefits and costs from these provisions to consumers and covered entities are discussed below.

For home equity lines of credit opened by state housing creditors using AMTPA preemption, the interim final rule mandates that an adjustable rate be based on a publicly available index that is beyond the creditor's control. For closed-end mortgages, a state housing creditor must either comply with this requirement or use a formula or schedule identifying the amount and timing of interest rate increases. The CFPB does not have specific information suggesting that creditors are originating mortgages where the interest rate is tied to an internal index. Based on discussions with the other regulators and industry groups, the CFPB understands that at most a few creditors use internal indices and that precluding their use in AMTPA loans would have a negligible impact on the mortgage markets.

To the limited extent some creditors might seek to offer ARMs based on an index within the creditors' control, the interim final rule benefits consumers by shielding them from rate increases within the unilateral control of the creditor that are not market-based. At the same time, the index requirements could increase the costs for creditors who wish to offer loans based on a prohibited internal index: These creditors may incur increased operational costs in tracking such an external index and increased costs of funding relative to using an internal index. They therefore may raise the price of certain loans or be unwilling to offer loans to some borrowers. However, the aggregate costs from these provisions are likely to be minimal since the costs of compliance for any affected individual lender are likely to be small, and these rules likely apply to only a limited number of mortgages. On the other hand, creditors making loans using AMTPA preemption will benefit to the extent that they are able to originate loans that would otherwise be preempted by state law and do not have to incur certain costs related to complying with the preempted state law. The specific cost reductions would depend on the regulations in the particular state. For creditors choosing to issue loans using AMTPA preemption, these benefits are assumed to exceed the costs.

The interim final rule also specifies that, in order to qualify for preemption, balloon payment mortgages with renegotiable rates must include a written commitment by the lender to renew the loan, subject to certain limitations. As discussed in Section III of this **Federal Register** notice, this requirement of a written commitment stems primarily from changes to the definition of ''alternative mortgage transaction'' made by Congress under the Dodd-Frank Act. The requirement for a written commitment will benefit some consumers by reducing the risk of default arising from a borrower's inability to satisfy the balloon payment or to refinance the loan at the end of the loan term. Conversely, for state housing creditors that, by virtue of AMTPA preemption, offer or wish to offer fixed-rate balloon mortgages with only unwritten (oral or implied) commitments to renew or with no such commitments, the implementation of this standard is likely to increase operational costs, such as revising administrative systems and procedures, including contract forms, in order to conform to the interim final rule. The commitment to renew will also impose costs on creditors as they assume additional risk. On the other hand, creditors making loans using AMTPA preemption will benefit to the extent that they are able to originate loans that would otherwise be prohibited by state law and by not having to incur certain costs related to complying with the preempted state law. The specific cost reductions would depend on the regulations in the particular state. For creditors choosing to issue such balloon loans using AMTPA preemption, these benefits are assumed to exceed the costs, and on net consumers should see greater credit availability at the cost of any decreased consumer protections provided by the preempted state regulations. Any effects of these provisions are likely to be greatest in markets, if any, where such balloon products are prevalent and where consumers have few alternatives to such products. The CFPB seeks comment regarding the size of, and current practices within, this market segment.

The interim final rule also requires that ''high-cost'' or ''higher-priced'' alternative mortgage transactions made using AMTPA preemption comply with the corresponding underwriting requirements and restrictions on loan terms contained in Regulation Z. For loan terms in these mortgages that are not preempted under AMTPA, such as terms related to prepayment penalties, the interim final rule imposes no additional costs or benefits since creditors are required to meet the federal standards even in the absence of the interim final rule and the state requirements remain in place. For loan terms that are preempted under AMTPA, creditors may save from not having to comply with the preempted state requirements. The potential costs and benefits for consumers depend on the specific provisions that are preempted.

B. The Impact of the Interim Final Rule on Depository Institutions and Credit Unions With $10 Billion or Less in Total Assets as Described in Section 1026 and the Impact on Consumers in Rural Areas

During 2010, roughly 1,500 state chartered credit unions with $10 billion or less in assets as described in Section 1026 of the Dodd-Frank Act made adjustable rate or balloon mortgages. In aggregate that year, these credit unions issued roughly 240,000 adjustable rate mortgages and another 30,000 balloon/hybrid loans. Together, these amount to just under 50 percent of the mortgages (by number) originated by these credit unions in 2010. To the extent that all or some of these loans were originated using AMTPA preemption, the benefits and costs described above would apply to these types of loans as issued by state chartered credit unions. The CFPB seeks additional information to specify more precisely the benefits or costs for these credit unions.

Similar issuance figures are not available for other depository institutions with $10 billion or less in assets as described in Section 1026. The closest available data for banks only detail the value of outstanding fixed rate and adjustable rate mortgages but not the value of originations broken out into these categories. As of the end of 2010, approximately 25 percent of the outstanding amount of mortgages held by state chartered banks with total assets under $10 billion, and secured by

[84] The interim final rule does not require these creditors to report to the CFPB the number of loans made under AMTPA.

1–4 family dwellings, was in adjustable rate loans. Applying that percentage to preliminary data from the most recently available data collected under the Home Mortgage Disclosure Act results in an estimated 340,000 adjustable rate mortgages made in 2009. As the 25 percent figure is likely an overestimate, the result should be viewed as an upper bound. Were all of these loans made using AMTPA preemption, they would incur the costs and benefits described for these products. The CFPB seeks additional information to specify more precisely the monetary costs or benefits for these institutions.

Further, only a fraction of the loans just described were likely made using AMTPA preemption. Many states have parity or wild card laws that allow designated lenders (most often depository institutions and/or credit unions chartered in those states) the option to follow mortgage regulations applicable to federally chartered lenders or other types of institutions operating in the same jurisdiction. Firms that operate under wild card laws face no added costs under the interim final rule because they do not need to rely on AMTPA preemption. In addition, in states that opted out of AMTPA in whole or in part,[85] the interim final rule will impose no additional costs or benefits to the extent of the opt out.

Still, it is possible that for particular lenders or markets, AMTPA preemption is an important driver of market outcomes. As discussed above, balloon mortgage loans without a written commitment to renew may represent a significant product in certain rural markets served by credit unions and community banks or by non-depository issuers who may not be able to avail themselves of wild card laws. The specific provisions of the interim final rule offering preemption for only those loans with written commitments, while imposing some costs, should benefit lenders and consumers in those specific markets by allowing such mortgages under AMTPA preemption. The CFPB is continuing to research this question and seeks comment on these issues.

C. Consultation

The CFPB has consulted with the prudential regulators, the Federal Trade Commission, and the Department of Housing and Urban Development regarding the substance of the interim final rule, including whether the rule was consistent with prudential, market, or systemic objectives administered by those agencies. The CFPB will engage in further consultations during the notice-and-comment rulemaking process.

[85] 12 U.S.C. 3804. Six states exercised their opt-out authority in whole or in part: Arizona, Maine, Massachusetts, New York, South Carolina, and Wisconsin. *See, e.g.,* Grant S. Nelson & Dale A. Whitman, Real Estate Finance Law § 11.4 (4th ed. 2001).

List of Subjects in 12 CFR Chapter X

Banks, banking, consumer protection, credit unions, mortgages, national banks, truth in lending.

Authority and Issuance

For the reasons set forth in the preamble and under the authority of Public Law 111–203, the CFPB establishes Chapter X in Title 12 of the Code of Federal Regulations, consisting of parts 1000 through 1099, to read as follows:

CHAPTER X—BUREAU OF CONSUMER FINANCIAL PROTECTION

■ 1. Add part 1004 to read as follows:

PART 1004—ALTERNATIVE MORTGAGE TRANSACTION PARITY (REGULATION D)

Sec.
1004.1 Authority, purpose, and scope
1004.2 Definitions
1004.3 Preemption of State law
1004.4 Requirements for alternative mortgage transactions
Appendix A to Part 1004—Official Commentary on Regulation D

Authority: 12 U.S.C. 3802, 3803; 15 U.S.C. 1604, 1639b; Pub. L. No. 111–203, 124 Stat. 1376.

§ 1004.1—Authority, purpose, and scope.

(a) *Authority.* This regulation, known as Regulation D, is issued by the Bureau of Consumer Financial Protection to implement the Alternative Mortgage Transaction Parity Act, 12 U.S.C. 3801 *et seq.,* as amended by title X, Section 1083 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376). Section 1004.4 is issued pursuant to the Alternative Mortgage Transaction Parity Act (as amended) and the Truth in Lending Act, 15 U.S.C. 1601 *et seq.*

(b) *Purpose.* Consistent with the Alternative Mortgage Transaction Parity Act, the Truth in Lending Act, and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the purpose of this regulation is to balance access to responsible credit and enhanced parity between State and federal housing creditors regarding the making, purchase, and enforcement of alternative mortgage transactions with consumer protection and the interests of the States in regulating mortgage transactions generally.

(c) *Scope.* This regulation applies to an alternative mortgage transaction if the creditor received an application for that transaction on or after July 22, 2011. This regulation does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011.

§ 1004.2 Definitions.

For purposes of this part:

Alternative mortgage transaction means a loan, credit sale, or account:

(1) That is secured by an interest in a residential structure that contains one to four units, whether or not that structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence;

(2) That is made primarily for personal, family, or household purposes; and

(3) In which the interest rate or finance charge may be adjusted or renegotiated.

Creditor shall have the same meaning as in 12 CFR 226.2.

Housing creditor means:

(1) A depository institution, as defined in section 501(a)(2) of the Depository Institutions Deregulation and Monetary Control Act of 1980;

(2) A lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(3) Any person who regularly makes loans, credit sales, or advances on an account secured by an interest in a residential structure that contains one to four units, whether or not the structure is attached to real property, including an individual condominium unit, cooperative unit, mobile home, or trailer, if it is used as a residence; and

(4) Any transferee of a party listed in paragraph (c)(1), (2), or (3) of this section.

State means any State of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, the Northern Mariana Islands, American Samoa, Guam, and any other territory or possession of the United States.

State law means a State constitution, statute, or regulation or any provision thereof.

§ 1004.3 Preemption of State law.

Pursuant to 12 U.S.C. 3803, a State-chartered or -licensed housing creditor may make, purchase, and enforce alternative mortgage transactions in accordance with § 1004.4(a) through (c) of this part (as applicable), notwithstanding any provision of State law that restricts the ability of the housing creditor to adjust or renegotiate an interest rate or finance charge with

respect to the transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

§ 1004.4 Requirements for alternative mortgage transactions.

(a) *Mortgages with adjustable rates or finance charges and home equity lines of credit.* A creditor that makes an alternative mortgage transaction with an adjustable rate or finance charge may only increase the interest rate or finance charge as follows:

(1) If the transaction is subject to 12 CFR 226.5b, the creditor must comply with 12 CFR 226.5b(f)(1).

(2) For all other transactions, the creditor must use either:

(i) An index to which changes in the interest rate are tied that is readily available to and verifiable by the borrower and beyond the control of the creditor; or

(ii) A formula or schedule identifying the amount that the interest rate or finance charge may increase and the times at which, or circumstances under which, a change may be made.

(b) *Renegotiable rates for renewable balloon-payment mortgages.* A creditor that makes an alternative mortgage transaction with payments based on an amortization period and a large final payment due after a shorter term may negotiate an increase or decrease in the interest rate when the transaction is renewed only if the creditor makes a written commitment to renew the transaction at specified intervals throughout the amortization period. However, the creditor is not required to renew the transaction if:

(1) Any action or inaction by the consumer materially and adversely affects the creditor's security for the transaction or any right of the creditor in such security;

(2) There is a material failure by the consumer to meet the repayment terms of the transaction;

(3) There is fraud or a willful or knowing material misrepresentation by the consumer in connection with the transaction; or

(4) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the extension the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(c) *Requirements for high-cost and higher-priced mortgage loans.* (1) If an alternative mortgage transaction is subject to 12 CFR 226.32, the creditor must comply with 12 CFR 226.32 and 12 CFR 226.34.

(2) If an alternative mortgage transaction is subject to 12 CFR 226.35, the creditor must comply with 12 CFR 226.35.

(d) *Other applicable law.* Notwithstanding paragraphs (a) through (c) of this section, a housing creditor that is not making an alternative mortgage transaction pursuant to § 1004.3 of this part may make that transaction consistent with applicable State or Federal law other than this section.

(e) *Reductions in interest rate or finance charge.* Nothing in this section prohibits a creditor from decreasing the interest rate or finance charge on an alternative mortgage transaction.

Appendix A to Part 1004—Official Commentary on Regulation D

§ 1004.1 Authority, Purpose, and Scope

1(c) Scope.

1. *Application received before July 22, 2011.* This Part does not apply to a transaction if the creditor received the application for that transaction before July 22, 2011, even if the transaction was consummated or completed on or after July 22, 2011. Whether 12 U.S.C. 3803(c) preempts State law with respect to such a transaction depends on whether: (1) The transaction was an alternative mortgage transaction as defined by the version of 12 U.S.C. 3802(1) in effect at the time of application; and (2) the State housing creditor complied with applicable federal regulations issued by the Office of the Comptroller of the Currency, the National Credit Union Administration, the Office of Thrift Supervision, or the Federal Home Loan Bank Board in effect at the time of application.

2. *Subsequent modifications and other actions.* If applicable regulations under 12 U.S.C. 3803(c) (including this Part) preempted State law with respect to an alternative mortgage transaction at the time the application was received, the following actions with respect to that transaction are entitled to the same degree of preemption under such regulations:

i. The subsequent consummation, completion, purchase, or enforcement of the transaction by a housing creditor.

ii. The subsequent modification, renewal, or extension of the transaction. However, if such a transaction is satisfied and replaced by another transaction, the second transaction must independently meet the requirements for preemption in effect at the time the application for the second transaction was received.

§ 1004.2 Definitions

2(a) Alternative Mortgage Transaction

1. *Alternative mortgage transaction.* For purposes of this Part, an alternative mortgage transaction that meets the definition in § 1004.2(a) includes any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest in a dwelling or in residential real property that includes a dwelling. The dwelling need not be the primary dwelling of the consumer. Home equity lines of credit and subordinate lien mortgages are alternative mortgage transactions for purposes of this Part to the extent they meet the definition in § 1004.2(a).

2. *Examples of alternative mortgage transactions.* Examples of alternative mortgage transactions include:

i. Transactions in which the interest rate changes in accordance with fluctuations in an index.

ii. Transactions in which the interest rate or finance charge may be increased or decreased after a specified period of time or under specified circumstances.

iii. Balloon transactions in which payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor makes a commitment to renew the transaction at specified intervals throughout the amortization period, but the interest rate may be renegotiated at renewal. For example, a fixed-rate mortgage loan with a 30-year amortization period but a balloon payment due five years after consummation is an alternative mortgage transaction under § 1004.2(a) if the creditor commits to renew the mortgage at five-year intervals for the entire 30-year amortization period.

iv. Transactions in which the creditor and the consumer agree to share some or all of the appreciation in the value of the property (shared equity/shared appreciation).

However, this Part preempts State law only to the extent provided in § 1004.3 and only to the extent that the requirements of § 1004.4(a) through (c) (as applicable) are met.

3. *Examples of transactions that are not alternative mortgage transactions.* The following are examples of transactions that are not alternative mortgage transactions:

i. Transactions with a fixed interest rate where one or more of the regular periodic payments may be applied solely to accrued interest and not to loan principal (an interest-only feature).

ii. Balloon transactions with a fixed interest rate where payments are based on an amortization schedule and a large final payment is due after a shorter term, where the creditor does not make a commitment to renew the transaction at specified intervals throughout the amortization period.

iii. Transactions with a fixed interest rate where one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature).

2(b) Creditor

1. *Creditor.* As defined in 12 CFR 226.2, ''creditor'' includes federally and State-chartered banks, thrifts, and credit unions, as well as non-depository institutions, such as State-licensed lenders. The Official Staff Commentary to 12 CFR 226.2 contains additional guidance on the definition of the term ''creditor.'' *See* 12 CFR 226.2, Supp. I.

§ 1004.3 Preemption of State Law

1. *Scope of State laws.* Regardless of whether a State law applies solely to alternative mortgage transactions or applies to both alternative mortgage transactions and other mortgage or consumer credit transactions, that law is preempted by § 1004.3 only to the extent that it restricts the ability of a State-chartered or -licensed housing creditor to adjust or renegotiate an interest rate or finance charge with respect to an alternative mortgage transaction or to change the amount of interest or finance charges included in a regular periodic payment as a result of such an adjustment or renegotiation.

2. *Examples of State laws that are preempted.* The following are examples of State laws that are preempted by § 1004.3:

i. Restrictions on the adjustment or renegotiation of an interest rate or finance charge, including restrictions on the circumstances under which a rate or charge may be adjusted, the method by which a rate or charge may be adjusted, and the amount of the adjustment to the rate or charge. For example, if a provision of State law prohibits creditors from increasing an adjustable rate more than two percentage points or from increasing an adjustable rate more than once during a year, that provision is preempted by § 1004.3 with respect to alternative mortgage transactions that comply with § 1004.4(a) through (c), as applicable. Similarly, if a provision of State law prohibits housing creditors from renewing balloon transactions that meet the definition of an alternative mortgage transaction in § 1004.2(a) on different terms, that provision is preempted by § 1004.3 only to the extent that it restricts a state housing creditor's ability to adjust or renegotiate the interest rate or finance charge at renewal. See also comment 1004.3–3.i.

ii. Restrictions on the ability of a housing creditor to change the amount of interest or finance charges included in regular periodic payments as a result of the adjustment or renegotiation of an interest rate or finance charge. For example, if a provision of State law prohibits housing creditors from increasing payments or limits the amount of such increases with respect to both alternative mortgage transactions and other mortgage or consumer credit transactions, that provision is preempted by § 1004.3 to the extent that it restricts a housing creditor's ability to adjust payments as a result of the adjustment or renegotiation of an interest rate on an alternative mortgage transaction. Other restrictions on changes to payments are not preempted, including restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Restrictions on the creditor and the consumer sharing some or all of the appreciation in the value of the property (shared equity/shared appreciation).

iv. Underwriting requirements that address the adjustment or renegotiation of interest rates or finance charges. For example, if a provision of State law requires housing creditors to underwrite based on the maximum contractual rate, that provision is preempted by § 1004.3 with respect to alternative mortgage transactions, regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions.

3. *Examples of State laws that are not preempted.* The following are examples of State laws that are not preempted by § 1004.3 regardless of whether the provision applies solely to alternative mortgage transactions or to both alternative mortgage transactions and other mortgage or consumer credit transactions:

i. Restrictions on prepayment penalties or late charges (including an increase in an interest rate or finance charge as a result of a late payment).

ii. Restrictions on transactions in which one or more of the regular periodic payments may result in an increase in the principal balance (a negative amortization feature) or may be applied solely to accrued interest and not to loan principal (an interest-only feature).

iii. Requirements that disclosures be provided.

§ 1004.4 Requirements for Alternative Mortgage Transactions

4(a) Mortgages With Adjustable or Renegotiable Rates or Finance Charges and Home Equity Lines of Credit

1. *Index values.* A creditor may use any measure of index values that meets the requirements in § 1004.4(a)(2)(i). For example, the index may be either single values as of a specific date or an average of values calculated over a specified period.

2. *Index beyond creditor's control.* A creditor may increase an adjustable interest rate pursuant to § 1004.4(a)(2)(i) only if the increase is based on an index that is beyond the creditor's control. For purposes of § 1004.4(a)(2)(i), an index is not beyond the creditor's control if the index is the creditor's own prime rate or cost of funds. A creditor is permitted, however, to use a published prime rate, such as the prime rate published in the *Wall Street Journal,* even if the creditor's own prime rate is one of several rates used to establish the published rate.

3. *Publicly available.* For purposes of § 1004.4(a)(2)(i), the index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the alternative mortgage transaction.

4(c) Requirements for High-Cost and Higher-Priced Mortgage Loans

1. *Prepayment penalties.* If applicable, creditors must comply with 12 CFR 226.32, including 12 CFR 226.32(d)(6) and (d)(7) which provide limitations on prepayment penalties. Similarly, if applicable, creditors must comply with 12 CFR 226.35, including 12 CFR 226.35(b)(2), which also provides limitations on prepayment penalties. However, under § 1004.3, State laws regarding prepayment penalties are not preempted. *See* comment 1004.3–3.i. Accordingly, creditors must also comply with any State laws regarding prepayment penalties unless an independent basis for preemption exists, such as because the State law is inconsistent with the requirements of Regulation Z, 12 CFR Part 226. *See* 12 CFR 226.28.

4(d) Other Applicable Law

1. *Other applicable law.* Section 1004.4(d) permits state housing creditors that do not seek preemption under § 1004.3 and federal housing creditors to make alternative mortgage transactions consistent with applicable State or federal law other than § 1004.4(a) through (c). However, § 1004.4(d) does not exempt those housing creditors from complying with the provisions of federal law that are incorporated by reference in § 1004.4 and are otherwise applicable to the creditor. Specifically, nothing in § 1004.4(d) exempts a housing creditor from complying with 12 CFR 226.5b, 226.32, 226.34, or 226.35.

Dated: July 19, 2011.

Alastair M. Fitzpayne,

Deputy Chief of Staff and Executive Secretary, Department of the Treasury.

[FR Doc. 2011–18676 Filed 7–21–11; 8:45 am]

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H.R. 2279/P.L. 112–21

Airport and Airway Extension Act of 2011, Part III (June 29, 2011; 125 Stat. 233)

S. 349/P.L. 112–22

To designate the facility of the United States Postal Service located at 4865 Tallmadge Road in Rootstown, Ohio, as the "Marine Sgt. Jeremy E. Murray Post Office". (June 29, 2011; 125 Stat. 236)

S. 655/P.L. 112–23

To designate the facility of the United States Postal Service located at 95 Dogwood Street in Cary, Mississippi, as the "Spencer Byrd Powers, Jr. Post Office". (June 29, 2011; 125 Stat. 237)

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